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ABSTRACT

This book concentrates on the functions and structure of state government and defines the constitutional responsibilities assigned to each of the three branches of North Dakota government. The media and special interest groups, both major influences affecting government policy, are also discussed. This book, designed for grades 8 through 12, identifies areas of learning and recommends specific content to assist students in becoming more knowledgeable about North Dakota government. The volume contains the following: (1) "Preface"; (2) "Resources"; (3) "Federal Government"; (4) "North Dakota State Government"; (5) "Legislative Branch of North Dakota Government"; (6) "Executive Branch of North Dakota Government"; (7) "Judicial Branch of North Dakota Government"; and (8) "Influences on Government." The Federal Government section includes lessons on: "Federalism versus State's Rights"; "Distribution of Power"; and "The Bill of Rights: An Introduction." The North Dakota State Government section includes: "Open Records"; "Open Meetings"; "Sources of Law"; and "How Administrative Rules are Adopted." (EH)

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A CLOSE UP LOOK AT NORTH DAKOTA STATE GOVERNMENT

1994

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Pioneers of the Future, ND State Capitol

SO 024 860

Department of Public Instruction

Dr. Wayne G. Sanstead, SUPERINTENDENT

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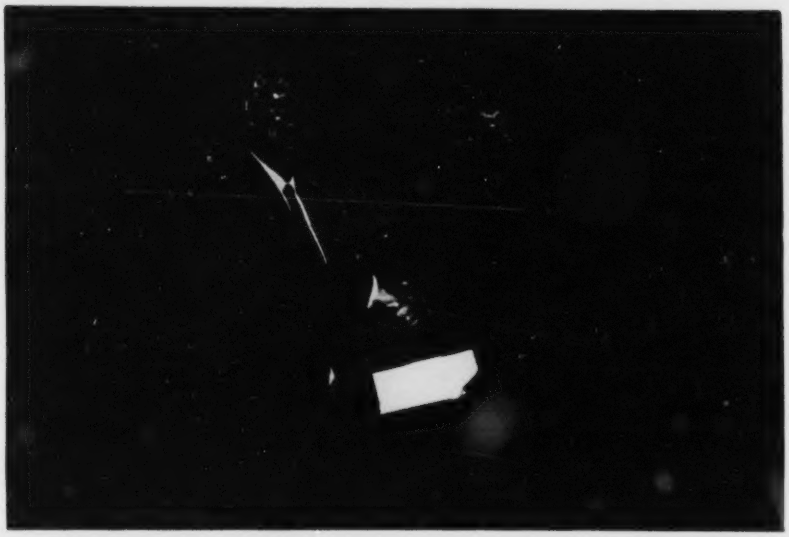

Dan Wilson, Manager of Amoco's refinery in Mandan, presents Dr. Wayne G. Sanstead with a $2,500 check to support the North Dakota Close Up Program. This is the fifth year that the Amoco Oil Foundation has awarded a $2,500 grant to Close Up.

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PREFACE

A major goal of the Close Up Foundation is to stimulate interest and encourage participation in the governmental process. If democracy is to survive, our citizens must be able to make intelligent decisions about government policies that affect the quality of everyday life. Political issues must be examined and debated by enlightened citizens capable of critical thinking and effective action.

Involvement requires an understanding of how the process works. In order to affect policy, it is important to know who the decision-makers are and what they do at the local, state and national level. This book concentrates on the functions and structure of state government and defines the constitutional responsibilities assigned to each of the three branches of North Dakota government. The media and special interest groups, both major influences affecting government policy, are also discussed.

The North Dakota Close Up Advisory Board hopes that you will use the book as a resource; that the information provided will give direction, arouse interest, and finally, promote active involvement in the democratic experience.

RESOURCES

DOCUMENTS

Governing North Dakota, Bureau of Governmental Affairs, University of North Dakota
History and Contents of the Constitution of the United States, Bonnie L. Harmeson, University of

NORTH DAKOTA

Classroom Activities in State and Local Government, Wisconsin Department of Public Instruction
Structure of North Dakota Government, Bureau of Governmental Affairs, University of North

DAKOTA

Rhode Island Book, Rhode Island Department of Public Instruction
North Dakota Century Code
North Dakota Administrative Code
Biennial Reports of Executive Offices
North Dakota Constitution

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Excerpts from other sources are annotated and include The Guide to American Law: Everyone's Legal Encyclopedia, West Publishing Co., c 1983.

This book was designed for students in grades eight through twelve by the North Dakota Department of Public Instruction. The North Dakota Close Up Advisory Board identified areas of learning and recommended specific content to assist students in becoming more knowledgeable about North Dakota government.

Compiled and edited by Irish Linnertz, Coordinator, North Dakota Close Up.

FEDERAL

GOVERNMENT

FEDERALISM VERSUS STATES' RIGHTS

A fundamental question facing the nation since its birth has been the balance of authority between states and the central government. As early as 1776, during the initial attempt to form a nation, the debate brought about a short-lived confederated government.

A confederation is a form of government with the bulk of power vested in the states, while the central government remains weak. Under this form, the central government held the states together for national defense, regulated trade and currency, and established a postal system. The central government consisted of a congress, that basically served as a forum for the state delegates to discuss issues of mutual concern. This form of government had limited success.

By 1787, 12 states, all but Rhode Island, sent delegates to Philadelphia to restructure the confederation. Out of this emerged the U.S. Constitution, which transformed the country into a nation of states united by a strong national government.

The struggle over the distribution of power, however, did not disappear with the new Constitution. Through the nation's history, the question of states' rights versus federalism is central to many of our controversial issues. Issues such as the 55-mph speed limit and mandatory seat belt laws have revolved around this struggle.

North Dakota, like other states, has fought for its rights, as in the recent battle over the mandatory seat belt law. To push its case, Congress threatened to withhold millions of dollars for highway improvement from states that did not comply with the guideline.

The action of using federal funds to gain compliance with federal mandates raises a new side of the controversy. Historically, arguments over states' versus federal rights were mostly philosophical. People debated the issue based on beliefs about basic individual and societal rights. Today, because of tighter budgets the economic side of this issue is being questioned.

Beginning in 1981, the amount of federal dollars sent to state and local governments diminished. States filled the void by raising taxes an average of one-third. With this trend, states and even cities have entered areas previously under the exclusive control of the federal government. Des Moines, Iowa is trying to create new markets for agricultural goods in China. California uses taxes from offshore oil production to aid low-income housing programs. Wisconsin, which has gone far beyond federal guidelines, requires that child support payments be automatically deducted from the paychecks of working parents.

The U.S. Constitution does not specify which rights belong to the federal government, which belong to the states, and which are shared. Thus the Constitution leaves room for very broad interpretations about the balance of power. The issue seems to defy resolution. It is as old as the Constitution, as volatile as to be a major cause of the Civil War, and as recent as the mandatory seat belt controversy.

DISTRIBUTION OF POWERS

Powers granted to the federal and state governments in the U.S. Constitution.

Reserved powers granted to the federal government include the power to:

- Regulate commerce (interstate and foreign)
- Coin Money
- Govern territories
- Conduct relations with foreign countries
- Declare war
- Provide armed services
- Establish post offices
- Issue patents and copyrights
- Establish standard weights and measures
- Enact naturalization and immigration laws

(Note: The federal government also has implied power which allows it to pass laws not specifically covered here but drawn from the powers listed above.)

Delegated powers granted to the states include the power to:

- Provide education to citizens
- Conduct elections
- Establish and empower local governments
- Charter and regulate business

Powers shared by both federal and state government include the power to:

- Levy and collect taxes
- Borrow money
- Enact and enforce laws
- Establish a court system
- Protect the health and welfare of the people.

IN FAVOR OF STATES' RIGHTS

The following narrative was adapted from articles written by the editorial board of USA Today, Edwin W. Edwards, Janet Sharp Hermann, and U.S. Senator Strom Thurmond. *USA Today*, August 2, 1984.

Our ancestors would be appalled at the federal restrictions we accept without ever invoking our power of states' rights.

From the beginning, the colonists jealously guarded their local sovereignty (right to govern) and finally fought a revolution for the right to remain free from central governmental control. After independence, the 13 colonies were so reluctant to surrender any authority that the first confederation was too weak to survive. In 1789, the Constitution's framers grudgingly granted federal power for carefully stated purposes.

In the Civil War, the South claimed state sovereignty to protect slavery, but Northern military force established the supremacy of federal authority. By the 20th century, industrialization, with interstate transportation and national markets, necessitated increasing federal regulation. In the 1930s, the New Deal sought to relieve the miseries of the Great Depression, and in doing so greatly expanded the role of the federal government. The 1960's civil rights movement marked the final defeat of state supremacy, as even the schools, long thought of as a stronghold of local control, fell to federal authority.

Something for nothing is what is expected when the federal government takes over duties and responsibilities more effectively handled at the state level. When the nation's founders wrote our Constitution, they were vague concerning which powers were granted to federal and state governments.

Now, our nation is too big and too complex for people who work in Washington to have a good idea of what is happening in the rest of the country. On some issues, it is better that they are not involved.

Each of us should have access to a high quality of life with as little interference from big government as possible. The federal government should focus only on issues vital to our national and international interest.

Yet today, when the nation should be concentrating on such issues as national defense and the global economy, the federal government is deeply involved with trivial state issues. The federal government, for example, stepped into a somewhat petty dispute over a Louisiana presidential primary. People in Louisiana questioned why the federal government forced them to hold a $1 million presidential primary when they badly needed the money for health services, education, and prisons.

Many areas should be "hands-off" for the federal government. It should be the states' initiative to decide such things as how to transport students, whether to offer free textbooks, and what level of state health services to provide. It is the state's role to decide on the fairest, least painful method of taxation, and what services to provide with these tax dollars.

One legitimate function of a state's power is to protect the basic freedoms of its citizens. This is normally done through a bill of rights in every state constitution. States have performed this function well, and until the early 1900s, they were mainly responsible for protecting the basic liberties of Americans.

The states need federal money, and the governors want as much of it as is available. Perhaps that is the reason not one governor complains that Washington is taking over states' rights and responsibilities. However, for every dollar the federal government hands to a state, there goes a demand that the state enforce federal rules. Washington already tells the states how fast people can drive and how old they can be before they drink.

Some critics say states' rights do not matter, that every major problem is either national or global. That is wrong. State rights matter as much as the federal responsibility to guarantee equal protection under the law. Apart from national security, the biggest problems in the country are those that are closest to the people--problems like achieving educational excellence, promoting public health, combatting crime, enhancing local economies, and delivering basic services. It is the states that are closest to the problems and are thus in the best position to deal with them.

In closing, let it be said that the American system of federal government will work best as a system of 50 individual units, each serving as a laboratory for experimentation, for finding solutions to problems. That is the real, but untapped, strength of the federal system.

OPPOSED TO STATES' RIGHTS

The following narrative is adapted from an editorial written by Henry Steele Commager, *USA Today*, August 2, 1984.

There are two things that can be said of states' rights.

First, the term itself is meaningless. States do not have rights, people have rights.

From the beginning, the American people allotted some of those rights to their national government, and others, thought to be local, to their states. At their pleasure, the people can change this allocation, as indeed they did in the 14th Amendment and subsequent amendments, which forbade states from enforcing laws which deprive any citizens of rights given to them by the federal government.

Second, the objection to the notion of states' rights is practical, not theoretical. We no longer have to fear rule by a foreign power as we did in 1789. Thus, the philosophical argument against a big central government is no longer relevant.

Every major problem confronting the American people today is national or global. The education of our children would still be carried on by segregated systems in many states were it not for the intervention of the federal government. Cleaning up environmental problems, sewerage treatment, acid rain, and toxic wastes require both a national and global approach. Such problems are beyond the scope of the states. In addition, problems such as conserving natural resources, improving public health, managing a national-global economy, fighting crime and terrorism, preserving rights and liberties, and maintaining the commitment to the general welfare must be dealt with through a federal approach.

None of the powers needed to solve these issues can be exercised effectively by states. All of them--and others on the horizon--must be dealt with by the national government. Only in this way will solutions that are fair and consistent for all citizens be found.

Try as he might, even President Reagan, who came in power on a platform that promised a return to states' rights, could not completely honor his vow. Instead, the Reagan administration, more than any other in modern history, sat with its feet on both sides of the federalism versus states' rights fence.

On the one hand, its policies of building up the most powerful military establishment in history as has always been the case with war and preparation for war, created a strong central government.

Thus, whatever gestures the administration made toward returning power to the states was counterproductive and futile, for the pressure to form a strong federal government in order to accommodate this military build-up was too powerful.

From its origins in the Civil War decade, the Republican Party has been a party of nationalism and centralization of government. The idea of President Reagan, or any president, marching back to state sovereignty and committing himself to reverse the verdict of the Civil War would be comic if it were not so dangerous.

As John Marshall, a former Chief Justice of the Supreme Court, wrote: "In making war we are one people. In making peace we are one people. In all commercial regulations, we are one and the same people. . . . America has chosen to be in many respects and to many purposes a nation (instead of a confederacy of separate states), and for all these purposes (its) government is complete."

WHICH SIDE ARE YOU ON?

Instructions

1. List the reason supporting arguments for and against states' rights.

2. Write a one- to two-page position paper explaining which view you agree with and why. You may wish to take a compromise position that merges ideas from both sides. But be aware that this could be quite challenging.

THE BILL OF RIGHTS: AN INTRODUCTION

Many of the states which ratified the United States Constitution did so only with the promise that the First Congress would quickly work to add a Bill of Rights. The Bill of Rights was designed to protect the individual from the government.

THE BILL OF RIGHTS

In June of 1789, James Madison of Virginia introduced to the First Congress a dozen suggested constitutional amendments. These made up a Bill of Rights modeled after bills of rights at use in many of the states.

Congress approved ten of the twelve suggested amendments in September, 1791. They took effect in December after the required number of states had ratified them.

The first ten of these amendments are the Bill of Rights. They include the personal and public liberties which Americans feel are to be untouched by any government.

THE JUDICIAL ROLE

James Madison, the father of these amendments, expected federal courts (not state courts) to play a major role in carrying out their guarantees. The Supreme Court itself did not need to use these promises very often in the first 130 years. It is interesting to note, however, that slavery was never settled by the courts as a matter of individual rights. The Justices of the Court saw slaves as matters of property rights, not human rights.

THE CIVIL WAR AMENDMENTS

Three constitutional amendments, often called the Civil War Amendments, were approved by Congress and ratified by the states after the war.

The Thirteenth Amendment, adopted in 1865, abolished slavery and involuntary servitude, except for persons sentenced to such service as punishment for crime. Congress was given the power by the amendment to pass laws to enforce this guarantee.

The Fourteenth Amendment, adopted in 1868, has been the center of many court decisions. It declares that all persons born or naturalized in the United States are citizens. This is the Constitution's only definition of citizenship.

The Fifteenth Amendment, adopted in 1870, forbids state or federal authorities to deny or take away the right of U.S. citizens to vote because of race, color, or previous condition of servitude. It, too, authorizes Congress to pass laws to enforce this guarantee.

U.S. BILL OF RIGHTS

The first ten amendments to the U.S. Constitution ratified in December, 1791, are collectively referred to as the Bill of Rights.

Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment II

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

Amendment III

No Soldier shall, in time of peace be quartered in any house without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

Amendment IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Amendment VII

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

Amendment VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment IX

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Amendment X

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

NORTH

DAKOTA

STATE

GOVERNMENT

NORTH DAKOTA STATE GOVERNMENT

The North Dakota system of government is modeled after our federal system. Under our federal system states keep considerable power. The Tenth Amendment to the U.S. Constitution declares that states retain all powers (reserved powers) other than those denied or granted solely to the federal government (delegated powers). Therefore, since the federal government is responsible for national defense, treaties with other countries, coining money, etc., the states are without power in those areas. States do have broad jurisdiction in a wide range of other areas including criminal law, property rights, education, public health and welfare, highways and local government.

State government consists of legislative, executive and judicial branches.

1. Legislative Branch

Like the federal Congress, our legislature proposes legislation, holds hearings and votes on proposed legislation. Unlike the Congress, our legislature takes final action on each and every bill introduced. In the North Dakota legislature, a bill cannot be killed in committee. Both houses of the legislature must pass a bill in order for it to come to the governor's desk to be signed or vetoed.

During hearings on bills, the public may offer testimony directly to the committee either supporting or opposing the bill.

Once passed, the governor may decide to sign it, not to sign it, allow it to become law without signature, veto the entire bill, or veto a line item or items in appropriation bills only. If a bill is signed, it usually becomes law August 1 of that year. If the bill appropriates money or affects taxes, it may take effect on July 1. The legislature may pass an emergency clause by a two-thirds vote. In that case, the law becomes effective upon being signed. If the governor vetoes a bill, the legislature may override the veto by a two-thirds vote of each house.

2. Executive Branch

When a bill becomes law, it is generally the duty of the governor and other state officials to implement those laws.
Because North Dakota has so many elected state officials, more than any other state, the governor's authority is somewhat diluted in that each elected official can set their own policies, rules and regulations, without the governor's approval.

In North Dakota, only the governor has authority to issue executive orders which have the force and effect of law. The governor also has responsibility for compiling and submitting the budget for all of the executive offices in state government.

The governor can and does establish commissions or task forces to study questions and make recommendations. There are 15 officials who are appointed by the governor. These appointees manage such agencies as the Department of Health, Human Services, Transportation and others.

3. Judicial Branch

The judicial branch of North Dakota government interprets the laws passed by the legislature and signed by the governor. The constitution of North Dakota provides for the election of judges on a nonpartisan basis. The debate about whether state judges should be elected or appointed is an ongoing one. The Judicial Branch is divided into four permanent courts: The Supreme Court, District Court, County Court, and Municipal Court. In 1987, a temporary Court of Appeals was also established. On January 2, 1995, county courts will be abolished and their functions taken over by district courts. Only the Supreme Court and the District Courts are constitutional courts. All other courts in the state are statutory courts.

In the criminal justice system, the judiciary, or court system, has three general functions. First is the speedy determination of guilt or innocence of individuals who are charged with criminal offenses. The second function is the sentencing of those individuals convicted of crimes. Third is the protection of rights of the offender. The court accomplishes these functions by the trial of an accused offender.

OPEN RECORDS

North Dakota Century Code 44-04-18.

1. "Except as otherwise specifically provided by law, all records of public or governmental bodies, boards, bureaus, commissions or agencies of the state or any political subdivision of the state, or organizations or agencies supported in whole or in part by public funds, or expending public funds, shall be public records, open and accessible for inspection during reasonable office hours.
2. Violations of this section shall be punishable as an infraction."

OPEN MEETINGS

North Dakota Century Code 44-04-19.

"Except as otherwise specifically provided by law, all meetings of public or governmental bodies, boards, bureaus, commissions, or agencies of the state or any political subdivision of the state, or organizations or agencies supported in whole or in part by public funds, or expending public funds, shall be open to the public. The governing members of the above bodies, boards, commissions, agencies, or organizations meeting in violation of this section shall be guilty of an infraction for a first offense. A public or governmental body, board, bureau, commission, or agency meets in violation of this section if it refuses any person or persons access to such meeting, unless such refusal, implicitly or explicitly communicated, is due to a lack of physical space in the meeting room for the person or persons seeking access."

You have a right to attend public meetings and to offer your views, relevant information, and/or opposition--orally or in writing.

If you plan to attend an open meeting, you should be on time and:

Plan your remarks in advance and, if possible, have written copies of your comments available.

Plan on following the custom (although it is not absolutely necessary) of beginning your remarks by addressing the chairperson and giving your name and address, and why you are there. For example: "Mr. Chairman or Madam Chairwoman, my name is John Q. Public from Minto and ---"

Be brief. Do not repeat what others have said. The meetings are informal, so be conversational. Avoid being too technical.

Do not be nervous or worried about doing something wrong. There are no "rights and wrongs." Government officials are just your friends and neighbors who want to hear what you have to say.

Expect some questions and comments from meeting members. These questions are not designed to embarrass you, but merely to provide additional information.

Avoid any clapping, cheering, booing or other demonstrations.

SOURCES OF LAW

All laws that restrict, protect, regulate and provide for our well-being come from one of the following sources:

Constitutional Law - There is the United States Constitution and each state has its own constitution. These set up legislative, executive, and judicial branches at each level.

Statutory Law - Laws enacted by the Congress and state legislatures are statutes. These can regulate and govern the people and can be reviewed by the courts.

Case Law - These are decisions from various courts based upon legal precedents that apply to future cases.

Executive - Presidents, governors or mayors may issue executive orders that have the force of law.

Administrative Law - Agencies of the Executive branches of state and federal governments issue rulings and regulations. These have the force of law.

International Law - International law is a loosely defined ruling governing the actions of nations. It is among nations, not above nations, so it relies upon cooperation and mutual trust. There is virtually no means of enforcement.

HOW ADMINISTRATIVE RULES ARE ADOPTED UNDER NORTH DAKOTA LAW

North Dakota administrative agencies have the authority to adopt, amend, or repeal rules in order to prescribe methods and procedures to implement the provisions of statutes administered or enforced by the agency. By definition, an administrative agency is any board, bureau, commission, department, or other administrative unit of the executive branch of state government. When a new law is passed affecting an agency, a new rule to implement the statutory change must be adopted within nine months of the effective date of the newly adopted law.

Every rule proposed by an administrative agency must be submitted to the Attorney General for an opinion as to its legality before final adoption. The Attorney General may suggest any revision or rewording of a rule to meet objections to the legality.

Upon becoming effective, rules have the force and effect of law until they are amended or repealed by the agency, declared invalid by a final court decision or determined repealed by the office of the Legislative Council because the authority for adoption of the rules is repealed or transferred to another agency. A copy of the rule adopted by an administrative agency and the Attorney General's opinion on that rule must be filed with the office of the Legislative Council for publication in the North Dakota Administrative Code.

The following entities are not agencies for purposes of the administrative agencies practice act:

1. Office of Management and Budget, in part
2. Adjutant General, in part
3. Council on the Arts
4. State Auditor
5. Department of Economic Development and Finance
6. Dairy Promotion Commission
7. Education Factfinding Commission
8. Educational Telecommunications Council
9. Board of Equalization
10. Board of Higher Education
11. Indian Affairs Commission
12. Industrial Commission, in part
13. Department of Corrections and Rehabilitation
14. Board of Pardons
15. Parks and Recreation Department
16. Parole Board
17. Superintendent of Public Instruction, in part
18. State Fair Association
19. State Toxicologist
20. Board of University and School Lands, in part
21. Administrative Committee on Veterans Affairs, in part

The adoption of administrative rules is accomplished by the following five steps:

1. The first step is to determine whether the state agency or official is required to adopt administrative rules under the administrative agencies practice act. The agencies listed above are not required to follow the requirements in that Act.

2. Rules are next drafted by the agency. Each administrative agency or state official is responsible for drafting rules for that agency. Specific guidelines establishing drafting requirements are provided by the North Dakota Legislative Council.

3. Before any rule is adopted, amended, or repealed, the administrative agency must provide a procedure for public input, either orally or in

writing, relative to the feasibility of the rule. An agency's notice of proposed rulemaking must include an explanation of the purpose of the rule, location where the text can be reviewed, address where written views can be sent, and, if the rule is substantive, the time and place set for an oral hearing. The notice must be filed with the office of the Legislative Council and published twice in each daily newspaper of general circulation published in the state. Before any rule becomes final, it must be submitted to the Attorney General to determine whether it is in compliance with state law. The Attorney General may not approve the rule if it exceeds the statutory authority of the agency, or is not concise or easily understandable.

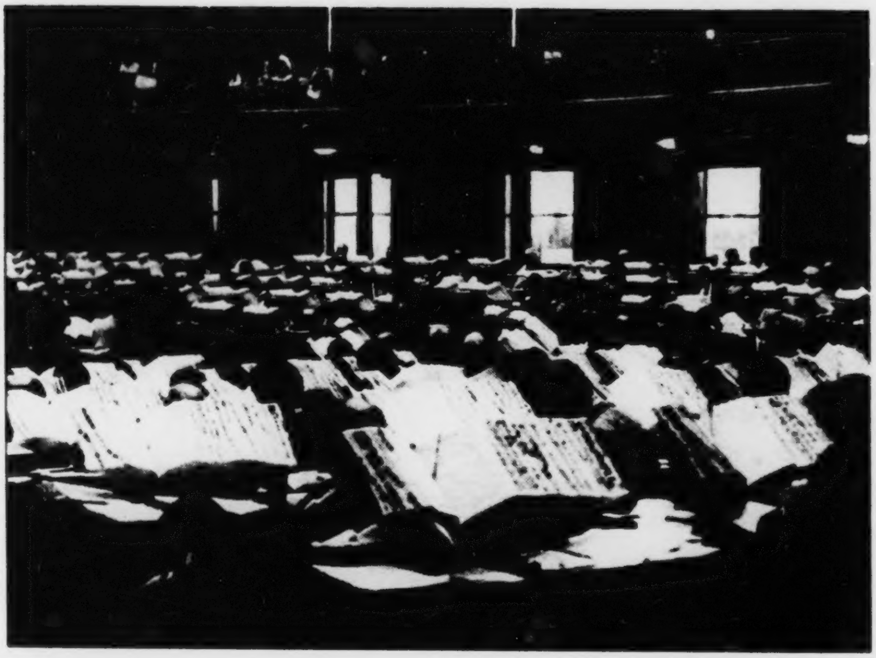
4. After the rule has been officially approved in writing by the Attorney General, and an opportunity for public comment has occurred, the agency may formally adopt the rule. At that point, a copy of the rule along with the Attorney General's written approval is filed with the Legislative Council of North Dakota.

5. Rules become effective and have the force and effect of law on the first day of the month after the month of publication in the North Dakota Administrative Code. If the immediate publication of a rule is a necessity, the agency or official can declare a rule an interim final rule. In that case, the rule will become effective on a date no earlier than of the filing of the notice with the Legislative Council. Interim final rules, however, can only be adopted where there is imminent peril to the public health, safety or welfare or because a delay would result in a loss of revenues appropriated to support a duty imposed on the agency. Administrative agencies must take steps to make interim final rules known to those persons who may be affected by them.

LEGISLATIVE

BRANCH

OF



NORTH DAKOTA

GOVERNMENT

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THE ROLE OF THE STATE LEGISLATURE

The legislature is the policymaking branch of government. It decides on the policies or laws to be followed by the people of the state. Since this is such a major function of the legislature, many people forget that the legislature performs a whole range of functions.

1. Pass Laws - The vast majority of the legislature's time is taken up with passing laws. Every session the North Dakota Legislative Assembly handles close to 1,000 proposals of laws.

2. Oversight - A growing responsibility for the state legislature is called "oversight." This term refers to the task of overseeing the activities of government to be sure that the money and powers given to state and local governments are being handled the way the legislature intended.

3. Constituent Service - Legislators are frequently asked by their constituents (people who live in their districts) to help them in dealing with government.

4. Approve Executive Appointments - Under the system of "checks and balances," the three branches of government are to serve as checks on each other. One of the checks is the requirement that key appointments made by the governor be approved by the senate of the legislature before the appointments can become final.

5. Caretaker of the State Constitution - The legislature proposes most amendments to the state constitution. As a consequence, each session of the legislature proposes several amendments to the people for their consideration.

6. Represents the State In the Federal System - Since 25 of the 26 amendments to the United States Constitution were submitted to the state legislatures for consideration, it is safe to say that the legislature represents the state in deciding which amendments to the U.S. Constitution will be adopted.

7. Express Opinions - The legislature also passes resolutions of different kinds expressing opinions on behalf of the state and federal agencies and officials, to other states, to interstate organizations, or to anyone else it chooses. Sometimes these resolutions are joint (both houses) resolutions and sometimes they are passed by just one house.

ORGANIZATION OF THE LEGISLATIVE BRANCH

North Dakota state government is patterned after the federal government with three separate but equal branches as provided for in the state constitution. The Senate and House of Representatives constitute the Legislative Assembly.

The Senate consists of 49 members; the House of Representatives has 98. Senators serve terms of four years with approximately half up for election every two years based on whether they are from even-numbered or odd-numbered legislative districts. Even-numbered Senators run in Presidential election years; odd-numbered in non-Presidential years. Representatives serve two-year terms; all representatives are up for reelection every two years.

Meeting on a biennial basis, the Legislative Assembly convenes on the first Tuesday after January 3 but not later than January 11 of odd-numbered years. Adjournment is generally March or April. The 54th Legislative Assembly will convene January 3, 1995.

The Constitution gives the Legislative Assembly the option of using 80 natural days on other than a consecutive basis during the biennium. Although that reconvened option is available, the Legislative Assembly has only employed it twice: reconvening in the fall of 1981 and 1991 to reapportion.

The Constitution permits the Legislative Assembly to meet in the month of December in even-numbered years for the purpose of orientation and organization. The Constitution also grants the Legislative Assembly the authority to establish its own rules.

It is customary for the members of the House and Senate to organize along political party lines. Members of each political party from the respective houses meet in caucus to select leadership. Leaders of each caucus and particularly the majority leaders of each house are recognized as having considerable power in the legislative structure.

The House of Representative elects one of its members to serve as Speaker. In North Dakota, there is a tradition that each Speaker serves only one term. The Lieutenant Governor, although a member of the executive branch, serves as President of the Senate, voting only in case of a tie. The Senate elects one of its members as President Pro Tempore to preside in the absence of the President.

Much of the work of the Legislative Assembly is conducted by committees. The rules adopted by each house provide for a certain number of committees based on subject matter. Legislators are asked on which committees they wish to serve and then are appointed to specific committees. In the House appointments are made by the Speaker and in the Senate by the Committee on Committees. Political parties generally are represented on committees in approximately the same proportion that they represent in the respective houses.

After a bill or resolution is introduced, it is referred to the committee that handles the appropriate subject matter. Public hearings are held with members of the public welcome to appear and testify. In North Dakota committees cannot kill bills but must report back to the floor every bill for a recorded roll call vote. After a bill passes one house it goes to the other house following exactly the same procedure.

Once a bill passes both houses, it goes to the Governor for consideration. The Governor may sign a bill, veto it, or refuse to sign thereby allowing the bill to become law without a signature. A vote of two-thirds of the legislators in both houses is necessary to override a veto.

THE ROLE OF THE LEGISLATIVE COUNCIL

The North Dakota Legislative Council, which consists of 15 legislators, was created in 1945. Until 1969 the body was known as the Legislative Research Committee. By statute, the Legislative Council consists of seven senators and eight representatives, including the majority and minority leaders of both houses and the Speaker of the House of Representatives. The statute provides that the Speaker appoints five other representatives, two from the majority and three from the minority as recommended by the majority and minority leaders respectively. The Lieutenant Governor, as President of the Senate, appoints three senators from the majority and two from the minority as recommended by the majority and minority leaders respectively. The Legislative Council is thus composed of eight majority party members and seven minority members, depending on which political party controls the senate.

The Council elects a chair from its membership. At the end of each legislative session, a new Legislative Council is named. Although the Legislative Council has the authority to initiate studies or other action deemed necessary between legislative sessions, much of its work results from study resolutions passed by both houses. Following the close of a regular legislative session, the Council meets to determine studies and designate interim committees. Legislators serve on one or more interim study committees.

Several interim committees, such as the Administrative Rules Committee, the Budget Section, the Garrison Diversion Overview Committee, the Legislative Audit and Fiscal Review Committee, and the Employee Benefits Programs Committee, are statutorily established or perform duties imposed by state law.

Between sessions, the interim study committees conduct meetings to hear testimony; to review information provided by staff, state agencies and interested parties; and to consider alternative approaches to issues raised. Interim committees submit the results of their work to the Legislative Council, the November preceding a legislative session. At that time the Council accepts, rejects, or amends committee reports. The Council then presents recommendations it has accepted, together with bills and resolutions necessary for implementation, to the Legislative Assembly. The Legislative Council is, in a sense, the Legislative Assembly working between the sessions.

In addition to conducting studies, the Legislative Council, through its staff, provides a wide range of service to legislators, other state agencies, and the public. The Council supervises the publication of the session laws, the North Dakota Century Code, the North Dakota Administrative Code; handles the financial administration of the legislative branch; develops and provides computer services for the Legislative Assembly; considers problems of state-wide significance that surface during an interim; represents the Legislative Assembly at interstate organizations such as the National Conference of State Legislatures, Council of State Governments, the Midwestern Legislative Conference, the Five State Legislative Conference, and the National Conference of Commissioners on Uniform State Laws.

Attorneys on the Legislative Council staff provide legal advice on legislative matters to legislators and legislative committees. The Council also has on its staff the Legislative Budget Analyst and Auditor who, with assistants, provide technical expertise to budget and appropriations committees and who reviews audit reports from the Legislative Audit and Fiscal Review Committee. The Council also provides computer services including research, bill drafting, and publishing capabilities. Its library collection includes materials of contemporary and historical legislative reference.

Nearly every facet of state government has been influenced by one or more of the Legislative Council's interim studies over the past 40 years. Statutory revision, government reorganization, and creation of laws affecting development of coal, oil and gas resources have been highlights of several interim studies. Also considered during a number of interims was the expansion of the University of North Dakota Medical School. Additional subjects which have been regularly studied include school finance, higher education issues, property tax levies, legislative rules, energy development, and court systems.

Perhaps the most value to citizen legislators are the Legislative Council committees, which permit members to keep up with rapidly changing developments in complex fields. Among those are the Budget Section, which receives the executive budget just prior to each legislative session. Another example is the Administrative Rules Committee, which allows legislators to monitor executive branch department rules and regulations.

LEGISLATIVE STANDING COMMITTEES

While the entire legislative process is important, the real work is done in the standing committees. These are committees of legislators organized to research and review bills relating to particular subjects, such as agriculture, natural resources, or transportation. Unlike interim committees, standing committees operate during the legislative session and consist of members of one house. Bills are introduced in either house. After a first reading, they are assigned to a standing committee. Agriculture bills introduced in the House are assigned to the House Agriculture Committee, those introduced in the Senate are assigned to the Senate Agriculture Committee.

When a bill is sent to committee, the committee studies it and makes recommendations. The committee may recommend amendments to the bill. All bills that are sent to committee must be reported to the floor of the legislative chamber.

Once the committee has examined the bill and made its recommendations, it is sent to the floor of the House or Senate for action.

There were 11 standing committees during the 1993 legislative session and one joint committee:

Committee Names	Senate Committee Members	House Committee Members
Agriculture	7	15
Appropriations	14	23
Education	7	15
Finance and Taxation	5	15
Industry, Business and Labor	7	15
Judiciary	7	14
Natural Resources	5	15
Political Subdivision	7	15
Human Services	7	14
Government and Veterans Affairs*	7	14
Transportation	7	14

The joint committee on constitutional revision was made up of five members of each house and its job was to study and recommend proposals for amending the state constitution.

The speaker of the house and the president of the senate determine which bills are assigned to the standing committees of their respective house.

The organizational session for the 54th Legislative Assembly will be held December 6-8, 1994.

THE ROLE OF THE EXECUTIVE BRANCH IN THE LEGISLATIVE PROCESS

The relationship between the executive and legislative branches of government in North Dakota is one that is continually evolving. It is a relationship built on communication . . . one that only works as a result of cooperation.

The need for cooperation and communication between the executive branch and the legislative branch can best be understood by examining a bit of our state's history. When North Dakota became a state in 1889, its citizens had already experienced 28 years of territorial government.

Their reflections on the quality and trustworthiness of that government are evident in the state's constitution. When the delegates to North Dakota's first Constitutional Convention met in Bismarck on July 4, 1889, they voiced their suspicions of government in the new constitution. The structure of the territorial government had often been corrupted by those who held office and, frankly, they intended to insure it would never happen again in the new State of North Dakota.

The constitution they wrote is three times as long as the federal government's constitution. It is surprisingly specific, flatly reserving the power of government for the people. It insures that the citizens have the power to make laws (initiative), to recall public officials and to withdraw laws (referendum) from the books. It reserves for the people the right to amend the constitution, but it makes the process accessible.

All of this is important in understanding the relationship between the executive branch and the legislative branch because certain powers were granted to each. The writers of the constitution placed restraints on the powers of both the governor and the legislature--delicately balancing the duties and responsibilities of governing the new state between the branches of government.

While the constitution makes the governor responsible for the government of the state, it strictly limits the governor's accountability and provides a check and balance that accommodates differing political interests. This was achieved by decentralizing the executive branch of government. North Dakotans elect 14 independent office holders. Each carries out the various programs according to the public mandate and the will of the people, not necessarily according to the will of the head of the executive branch--the governor. This makes being governor of the State of North Dakota a difficult job. The governor does not have complete authority over the executive branch or over the administration of state government. However, the governor does control 14 key departments of government. In addition, the state's chief executive appoints the members of some 90 boards, commissions and agencies that control or influence other areas of public policy

The job of governor requires a complex blend of talents and skills. First of all, the governor is an administrator with control over much of the state's budget. Secondly, the governor is a coordinator. The influence of the position allows the governor to bring various groups and individuals together, encouraging them to work together for a common goal.
The governor is a manager, with responsibility for personnel and the operation of agencies under his control. This includes commanding the state's militia, or National Guard, when they are not in the service of the federal government; acting as a judge in the official role as chair of the Pardon Board, granting pardons for offenses against the state; and acting as the state's ambassador to other states and, in many cases, to foreign governments.

But, perhaps most importantly, the governor is an active participant in the legislative process. The governor has a responsibility to develop and submit to the legislature prior to the beginning of the session an Executive Budget. This important document outlines the governor's recommendation for the operation of the Executive Branch of state government. It includes suggested funding levels for state government programs and, if necessary, recommendations for tax increases to pay for needed government services.

The Executive Budget usually becomes the blueprint for government spending. While it is only a starting point and is subject to legislative review, change and approval, it can have a significant influence on policy and programs by bringing needs, benefits, issues and potential conflicts to light.

The process of developing the Executive Budget is one of the governor's most important functions. It takes many months and involves a great deal of study. Many decisions are made at each of the various steps in the process that eventually produces the budget blueprint.

The governor has another influential method of focusing attention on priorities. At the beginning of each legislative session, the governor is charged by the constitution with communicating to the assembly the condition--or state of the state "recommending such measures as he/she shall deem expedient." These two procedures are the governor's formal methods of formulating and communicating proposals for public policy to the legislature.

Once the legislature is in session, the governor helps provide information from the agencies of the executive branch on bills being considered. Inasmuch as most of the programs enacted by the legislature are carried out by agencies in the executive branch, this information and cooperation can be invaluable.

One agency that is especially important during the legislative process is the Office of Management and Budget. In conjunction with the State Tax Department, they provide revenue forecasts estimating the state's income over the biennial budget period. This "financial planning" is an important and necessary part of the legislative session.

The governor also has the authority to sign bills into law or, if the bill is not considered to be in the best interest of the state, to veto it, sending it back to the house where it was first introduced. The legislature can override the veto with a two-thirds vote in each house.

The governor may also express displeasure with a bill by "leaving it on the desk." If the governor has neither signed, nor vetoed a bill after three days (excluding Sundays), it becomes law without the governor's signature.

If the legislature adjourns and the governor has several bills to act upon, the governor has 15 days to take one of the three actions--sign it, veto it, or leave it on the desk, whereupon it becomes law.

Importantly, the governor of North Dakota also has the power of "line item veto." This allows the governor to veto a part of an appropriations bill, while letting the rest stand. This also allows the governor to influence spending for individual items or programs. The current style of appropriation bills has restricted the use of an item veto. Plus, one way to avoid an item veto is to jackpot money into one appropriation without separate line items.

The constitution strictly prohibits the governor from threatening or implying the use of a veto. This is designed to minimize the governor's influence on the legislative process, as a threatened veto could diminish support or enthusiasm for a bill. However, the executive budget process, the State of the State message and the testimony process provide the executive branch with ample opportunity to make a case for or against measures the governor supports or opposes.

The governor's role in the lawmaking process, like that of the entire executive branch, is one of communication, coordination and cooperation with the legislative branch. The governor definitely holds a leadership role in defining the condition and priorities of the state, both through the executive budget and the State of the State message. When added to the veto power, these functions make the governor an important participant in the legislative process.

Just as the Main Street in your community runs two ways, so do the lines of communication and cooperation between the executive and legislative branches of government. Both branches must work together to create and maintain a good system of government for the people of North Dakota.

BILLS AND RESOLUTIONS

Bills, if passed by the Legislative Assembly, become law. Resolutions are used to express legislative opinion or intent, and to propose state constitutional amendments or to approve amendments to the U.S. Constitution.

Who May Originate A Bill or Resolution?

Although bills or resolutions may be proposed or initiated by lobbyists or individuals, they must be sponsored by someone within the legislative system and they must be introduced in one of the houses. Each executive agency and the Supreme Court files those bills they wish to have introduced with the Legislative Council during the organizational session, or thereafter, but no later than December tenth prior to the ensuing regular session. Such bills are deemed introduced by the standing committee of the House or Senate with general jurisdiction over the subject matter of the bill. The Legislative Council numbers the bills and delivers those bills to the President of the Senate or the Speaker of the House for recording. Executive agency and Supreme Court bills are identified by noting the name of the agency or the court under the name of the sponsoring committee.

In North Dakota, individuals may initiate laws through a petition system. The proposed law is then put on the ballot to be voted on by the public.

How is a Bill or Resolution Introduced?

A bill or resolution is introduced in one of the house chambers. However, members of both houses may co-sponsor a bill. Introduction for proposed legislation may be made by 1) Legislators, 2) Standing Committees, or 3) the Legislative Council.

Once a bill or resolution is introduced to a chamber, it is checked for correct style and form and given a bill number. House bills begin with the number 1001 and Senate bills begin with 2001.

Information on page II-10 depicts "HOW A BILL BECOMES A LAW" which is a copy of a brochure provided through the courtesy of the North Dakota Association of Realtors.

SINGLE HOUSE RESOLUTIONS

A single house resolution is voted upon only by the house of introduction and may be used to take action affecting its own concerns or procedures.

MEMORIAL RESOLUTIONS

A memorial resolution is used by a single house to express condolences.

CONCURRENT RESOLUTIONS

A concurrent resolution must pass both houses of the legislative assembly. It is used for proposing constitutional amendments, directing Legislative Council studies, expressing legislative approval, authorizing expenditures, or expressing an opinion to Congress or to the President.

Drafting of Bills and Resolutions

The original of each bill or resolution must be filed with the Secretary of the Senate (Clerk of the House) and must be prepared in the form prescribed by the Legislative Council. The bill or resolution must be submitted to the Legislative Council for approval of form and style before it can be introduced to the Legislative Assembly.

The following checklist reviews form and style requirements:

1. Do the words Fifty-fourth Legislative Assembly of North Dakota appear in the upper left-hand corner of the first page, and the words Fifty-fourth Legislative Assembly appear in the upper left-hand corner of each subsequent page?

2. Do the words SENATE BILL NO. or HOUSE BILL NO. appear at the top of the first page of the bill? An agency filing a bill for introduction as an agency bill under Joint Rule 208 may express a preference for the house of introduction but the presiding officer will make the final decision concerning house of introduction.

3. Does the first page contain the words Introduced by followed with the name of the sponsor (or sponsors) below it? If an agency is filing the bill or resolution, is the correct title of the agency used?

4. Does the bill or resolution have a proper title? Are "create" sections referred to first, "amend" sections second, "repeal" sections third, and

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"special clauses" last? Does each group have a "relating to" clause?

5. Does the bill have the proper "enacting clause" or the resolution have the proper "resolving clause?"

6. Have the sections of the North Dakota Century Code been listed properly in the title, and have they been arranged in numerical order by Century Code section number in the body of the bill?

7. If the bill creates a new numbered section or subsection of the North Dakota Century Code, has the approval of the code revisor of the Legislative Council been obtained?

8. If the bill contains amendments to the North Dakota Century Code, has all new material been properly underscored, has all material to be deleted been overstruck by dashes, and has it been typed from and proofread against the Code?

9. Does all overstruck material being replaced with new material occur before the underscored material?

10. Have all words been written out? Do not use abbreviations.

11. Have all references to "and/or" been removed?

12. Do all created sections contain a caption?

13. Do the amending and repeal clauses specify the source, i.e., 1989 Supplement, if necessary?

The "North Dakota Legislative Drafting Manual" contains specific instructions for the drafting of bills and resolutions, including sections on the following:

- Amendments to bills and resolutions
- Enrolling and engrossing process
  - Engrossing--process of incorporating all amendments approved by a legislative chamber into a bill or resolution.
  - Enrolling--the Legislative Council staff checks the final bill or resolution to make sure that it contains all proposed amendments. This is done after the final legislative action, prior to presentation to the Governor for approval or veto.
- Style and grammar guidelines

The manual also contains examples of bill drafts and resolutions.

Amending a Bill or Resolution

Use of Overstrike and Underscore. In amending the Century Code or Session Laws, extreme care should be taken that each amended section conforms exactly to the existing law, including punctuation. Any material contained in a section of the Century Code or Session Laws which is to be deleted by an amendment to that section must be shown in the typewritten bill, and must be indicated by being overstruck by dashes. All new material inserted in an existing section must be underscored. New material (indicated by underscores) replacing old material (indicated by overstrikes) should follow the old material being replaced. Whenever possible, existing language should be retained. Punctuation within a Century Code or Session Laws section may not be changed unless handled as an amendment. If a word is to be changed from singular to plural or vice versa, all of the old word must be overstruck and all of the new word must be underscored. If amendments to the existing law are included in a bill creating new law, all new material must be underscored except for certain special clauses. When a bill contains only new law, the new material should not be underscored.

Example--Amendments to a Bill as Introduced

Proposed Amendments to House Bill No. 1250.

Page 1, line 27, remove the overstrike over "~~three~~" and "~~fifty~~" and remove "four"

Page 2, line 1, remove "seventy-five"

Page 2, line 4, remove the overstrike over "~~five~~" and remove "six" and "and fifty cents"

Page 2, line 6, remove the overstrike over "~~eight~~" and "~~and fifty~~" and remove "ten"

Page 2, line 7, remove the overstrike over "~~cents~~"

Page 2, line 10, replace "from July 1, 1989," with a period

Page 2, remove lines 11 and 12

Page 2, line 18, after "receipt" insert "or the certificate of a member of the legislative assembly"

Page 2, line 21, replace "thirty-three" with "thirty"

Page 3, line 3, overstrike "The travel"

Page 3, overstrike lines 4 through 8

Page 3, line 17, replace "thirty" with "twenty-five"

Page 3, line 20, overstrike "thirty" and insert immediately thereafter "thirty-five"

Page 4, line 8, after "aircraft" insert ", except for leased or rented private aircraft from a recognized fixed base aviation operator who is in the business of leasing and renting private aircraft and is located on an airport open for public use"

Page 4, line 33, replace "thirty" with "twenty-five"

Renumber accordingly

North Dakota Legislature (Floor Action)

See page II-11 for the Order of Business for the Senate and House.

Floor action relating to bills.

Once the committee has arrived at its recommendation, the bill is reported back to the full House or Senate. It is scheduled on the "calendar." The bill and its committee recommendations are then discussed by the full chamber and a decision is made. For a bill to pass and be sent to the next house, it must be approved by a "constitutional" majority, i.e., one more than half of the members elected to the body. This requirement of a constitutional majority means that an absent memb[illegible] is the same as a "no" vote.

When a bill is up for final passage, a recorded roll-call vote is required in which every member present must publicly vote. To get a quick tally of the votes, electronic voting machines have been used in the House since 1947 and in the Senate since 1949. A bill which has been passed by one house is sent to the other house where it must go through the entire procedure all over again-- from introduction, first reading, committee consideration and committee recommendation to floor consideration.

When the two houses disagree over a bill, each house appoints a committee of three to meet as a joint conference committee of six to iron out the difference between the two versions of the bill. Once agreement is reached, the conference committee's recommendations for resolving the differences are presented to the two chambers. If both chambers agree with the report, the measure is then passed. If they do not agree with the report, they may appoint new conference committees to meet until agreement is reached. Sometimes they never agree and the bill d[illegible] for lack of agreement.

When the bill has been passed by both houses in exactly the same form, it is dispatched to the governor. Under the constitution, the governor has several options--signing it, letting it become law without signature, or vetoing it. If the governor vetoes it, it takes two-thirds of both houses to override the governor's objections.

HOW A BILL BECOMES A LAW

1 After the preliminary business of opening a session the presiding officer (the Lieutenant Governor in the Senate and the Speaker in the house) calls for an introduction of bills.

2 Any legislator may hand his bill to the bill clerk. Bills are usually prepared by the Legislative Council for introduction by a legislator. If a bill is not prepared by the Legislative Council, it must be reviewed by the Legislative Council Office for proper form and style.

3 The bill clerk stamps a number on the face of the bill and the chief clerk of the House or the Secretary of the Senate reads the bill by title only. (This is called the first reading of the bill).

4 The presiding officer refers the bill to the proper committee.

5 In committee the bill is read and discussed.

6 Public hearings are held on every bill.

7 The full committee may (a) report the bill unfavorably, (b) report it favorable with or without amendment, (c) report it without any recommendation.

8 Each committee reports to the House or Senate on the bills which have been referred to it. All bills, regardless of type of committee report, will be placed on the calendar for final passage.

9 If the committee recommends an amendment, the amendment is placed on the calendar and adopted or rejected prior to the bill itself, being placed on the calendar.

10 When a bill comes up on the calendar, it is read again. This is known as the second reading and is the time which the bill can be finally passed, or is killed. Then the bill is debated on the floor of the House or Senate.

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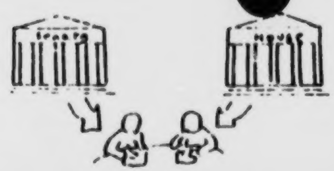
11 The bill is then (a) defeated, (b) passed. If passed the bill is delivered (messaged) to the other house.



12 If second house passes the bill in the same form, it is sent to the Committee on Enrollment and Engrossment, signed by presiding officers and sent to the governor. If the second house passes the bill in a different form (amends the bill) it is sent back to the first house for concurrence. If the first house does not concur, the presiding officer of both houses appoints a conference committee.

13 This conference committee makes recommendations to both houses and both houses must approve the bill in the same form. The bill is then signed or vetoed by governor. If signed, it becomes law (usually becomes law on July 1).

14 If vetoed, it can become a law by a ⅔ vote of both houses.

15 A bill once passed, may be repealed, wholly or in part, through a vote of the electorate, a referendum.

16 A law may also be proposed and acted upon by the electorate by means of an initiated measure.

NORTH DAKOTA LEGISLATURE
ORDER OF BUSINESS

SENATE ORDER OF BUSINESS

The Order of Business shall be as follows:

1. Prayer by the Chaplain.
2. Calling the Roll.
3. Reference to the Journal.
4. Presentation of Petitions and Communications.
5. Reports of Standing Committees.
6. Consideration of Amendments.
7. Reports of Select Committees, Procedural Committees, and certain divided committee reports.
8. Motions and Resolutions.
9. First Reading of Senate Bills and Resolutions.
10. Consideration of Amendments, Bills, and Resolutions on Consent Calendar.
11. Second Reading of Senate Bills and Resolutions.
12. Consideration of Messages from the House.
13. First Reading of House Bills and Resolutions.
14. Second Reading of the Same.
15. Unfinished Business.
16. Signing of Bills and Resolutions.
17. Announcements.

HOUSE ORDER OF BUSINESS

The Order of Business shall be as follows:

1. Prayer by the Chaplain.
2. Calling the Roll.
3. Reference to the Journal.
4. Presentation of Petitions and Communications
5. Reports of Standing Committees.
6. Consideration of Amendments.
7. Reports of Select Committees, Procedural Committees, and certain divided committee reports.
8. Motions and Resolutions.
9. First Reading of House Bills and Resolutions.
10. Consideration of Amendments, Bills, and Resolutions on Consent Calendar.
11. Second Reading of House Bills and Resolutions.
12. Consideration of Messages from the Senate.
13. First Reading of Senate Bills and Resolutions.
14. Second Reading of the Same.
15. Unfinished Business.
16. Signing of Bills and Resolutions.
17. Announcements.

ELECTION OF LEGISLATORS

Precinct

Counties, cities and townships determine boundaries of election precincts. Individuals must vote at the polling place in their designated precinct.

The Secretary of State is Chief Election Officer for the State. Each city and county appoints an inspector who, together with members of the counties' official election board, oversees the election process.

Legislative Districts

Because both houses of the Legislature must represent an equal number of people, legislative districts have been established by the state legislature. Populations within the legislative districts must stay within a 10 percent range between the district with the highest population and the district with the least. All legislative districts are single-senator districts. There are two representatives per district. The next legislative reapportionment will occur after completion of the 2,000 federal census.

Political Party

North Dakota has a two-party political system - Republicans and Democrats. A political party consists of people that support and advocate the same philosophy and principles. Individuals who subscribe to work for a party are called partisan.

Candidates may run independent of party affiliation if they obtain 7,000 signatures on a petition to place their name on the ballot.

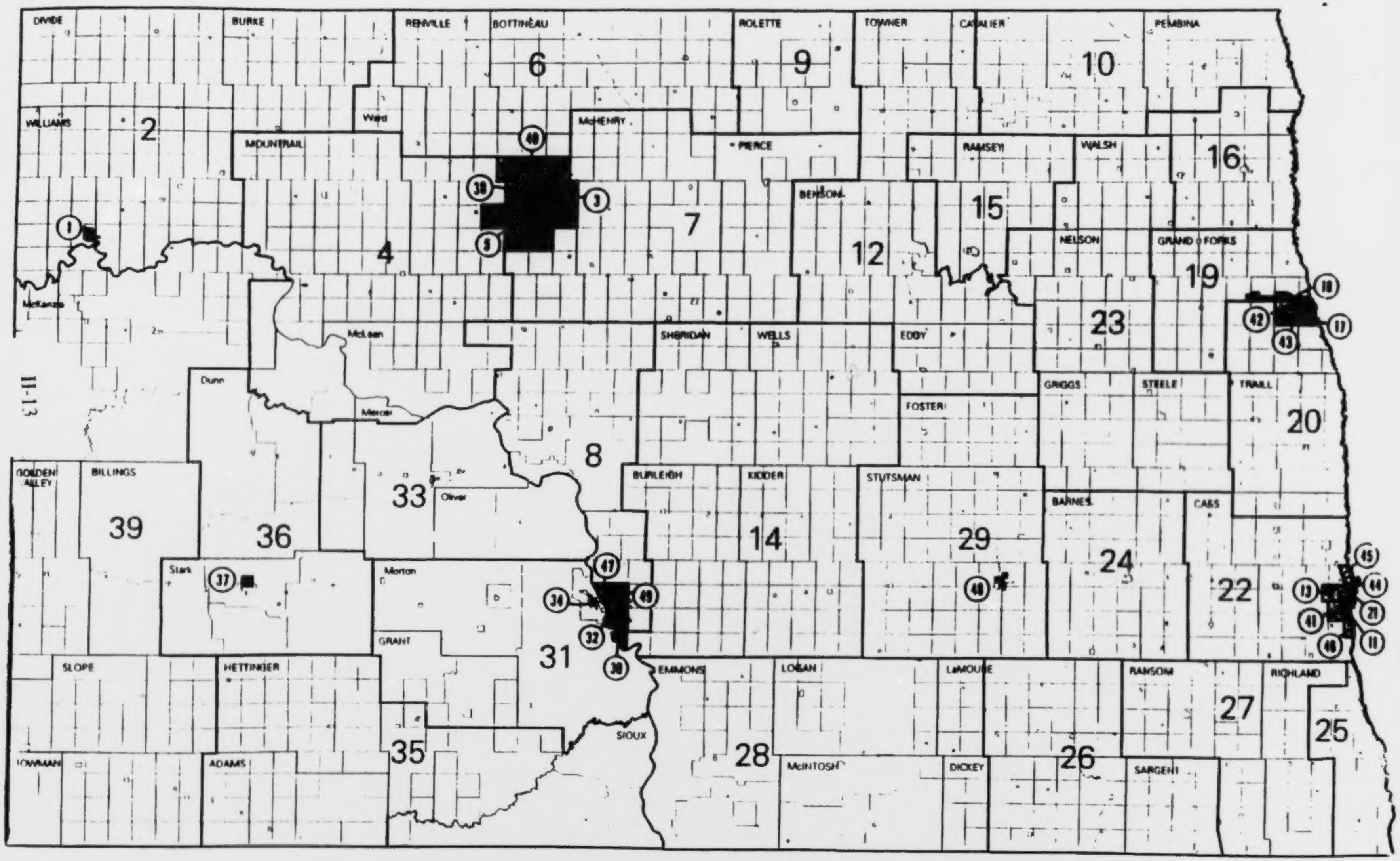
North Dakota has two elective offices that, by law, are placed on a no-party ballot. They are the Superintendent of Public Instruction and the Labor Commissioner.

Platform

A legislative candidate presents a platform to the constituents in the legislative district. A platform is based on a plan of action, statement of policy or a group of principles.

Constituents

Constituents are the body of citizens in the legislative district who elect the candidate to represent their interests.



Legislative Districts Effective December 1, 1991

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LEGISLATIVE TERMS

Act of Legislature - a law (statue) adopted by the legislature.

Bicameral - a legislative assembly made up of two chambers.

Biennial - a two-year period; the North Dakota legislature meets "biennially" - every two years; as a result, the state budget is for a two-year period.

Bill - the proposal for a law to be considered by the legislature.

Calendar - the day-to-day working agenda of the house or the senate.

Caucus - an informal meeting of individuals who subscribe to a common political objective, such as the Republican caucus, the Democratic caucus.

Census - a count of the number of people within a given geographical area.

Century Code - the body of North Dakota law compiled in 20 volumes originally published in 1961 and updated after every legislative session.

Chamber - meeting place, e.g., house chamber, senate chamber.

Chief Clerk - head administrative officer in the house of representatives.

Committee - a subgroup of a larger body given an assignment of complete, usually with the understanding that it reports its findings back to the larger group.

Committee Report - in the state legislature, the recommendation of a committee on subjects assigned to it.

Committee on Committees - a committee created to decide the membership of other committees.

Conference Committee - in the state legislature, a committee made up of three members from each house to negotiate differences over a specific piece of legislation upon which the two houses disagree.

Confirm - approve; usually refers to approval by the senate of appointments by the governor of persons to fill governmental positions.

Constitutional Majority - one more than half of the members elected to the assembly.

District - a legislative district is a geographic area designated to elect members of the legislature; a county commissioner district would be a subdivision of the county to elect a county commissioner.

Emergency Clause - adopted by the legislature to make the laws effective immediately upon filing with the Secretary of State.

Emergency Measure - a law having an emergency clause within it and becoming effective upon filing with the Secretary of State.

Initiative- the power of the people to propose their own law; to use the initiative, petitions must be circulated to secure the signatures of a specified number of qualified electors; the measure is then placed on the ballot for reflection or approval of the voters.

Interest Group - a group with a common interest that works to influence legislative bodies and administrative agencies; also called pressure groups.

Item Veto - the power of an executive to veto specific items of an appropriation bill adopted by the legislative assembly.

Joint Committee - a committee made up of members from both houses of the legislature.

Joint Resolution - a resolution agreed to by both houses of the legislature.

Joint Session - both houses of the legislature meeting in one body.

Journals - the published record of the two houses of the legislature, setting forth the disposition of bills and resolutions, as well as other business; contains the voting records of legislators.

Law - a general rule for the conduct of members of the state adopted by the legislative assembly, adopted by the people as the result of an initiated measure, or determined by a court.

Legislative - having to do with legislating; branch of government consisting of the two houses of the legislature.

Legislative Assembly - denoting both houses of the legislature.

Legislative Council - a permanent staff of professional legislative aides under the direction of a 15-member committee made up of members from both houses of the legislature; created to handle legislative matters between sessions.

Legislative District - a geographical area designated for the purposes of electing members to the legislature.

Legislator - a member of either house of the legislature.

Lieutenant Governor - presides over sessions of the state senate; first in line to become governor if there is a vacancy.

Lobby - to seek to influence the decision of the legislature or of executive agencies.

Lobbyist - person who seeks to influence governmental decisions.

Majority - more than half.

Majority Leader - the spokesperson and leader of the political party in the legislature having control by virtue of having a majority; each house of the legislature has a majority leader and a minority leader.

Measure - a proposal; a bill or resolution in the legislature; an initiated or referred question placed on the ballot.

Minority Leader - the leader of the minority party in each house of the legislature.

Motion - a proposal for an action offered to a group by one of its members.

Override a Veto - passage of a measure over the objections of the governor.

Petition - a form bearing the names of citizens requesting action by a governmental official.

President Pro Tem - a member of the senate elected to serve as a temporary president when the lieutenant governor is not available to serve as president.

Procedural Committees - legislative committees designated to deal with the procedural problems of the legislature.

Quorum - a minimum number of members who must be present to legally conduct business.

Reading - official notice to the legislative chamber that a bill is moving through the chamber.

Redistrict - redraw the boundaries of districts designated for the election of legislators, alderman, or county commissioners.

Referral - the act of submitting an act of the legislature (or city government board in some cities) to a vote of the people by circulating petitions and securing a specified number of signatures.

Representative - member of the house of representatives in the state legislature.

Secretary of the Senate - chief administrative officer of the senate.

Session - meeting. North Dakota has a legislative session every two years.

Speaker - presiding officer of the house of representatives elected from among the members.

Special Committee - a temporary committee created for a single purpose.

Standing Committee - a legislative committee that exists throughout the session, receives all bills relating to specific subject areas, considers such bills, and makes recommendations to the full body.

Statute - a law adopted by the legislative assembly or by the people as the result of an initiative.

Term - length of time a person is to hold office.

Unicameral - a legislative assembly consisting of one house.

Veto - an act of the executive in which he officially refuses to go along with an act of the legislative branch.

EXECUTIVE BRANCH

OF

Governor Edward T. Schafer

NORTH DAKOTA

GOVERNMENT

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THE EXECUTIVE BRANCH OF NORTH DAKOTA GOVERNMENT

The executive branch of government is one of the three separate and co-equal branches of government. It is the one branch of government that executes policy. It is also the branch that exercises leadership on a day-to-day basis in terms of not only implementing law but also formulating policy and responding to immediate problems. The legislature captures the attention of the public during the legislative session but it is the executive branch which is immersed in public issues for the long period between sessions. Members of the executive branch also represent state government in terms of our relations with other state governments and the U.S. government, as in the case of state representatives testifying before Congressional committees.

The governor, as chief executive, and other executives have a great deal of power; that is, they are empowered to make decisions which affect the entire political community of the state, and to determine the composition of the government of the state. However, the executive branch operates within a system of onstraints and restraints. These may be constitutional, atutory, cultural, and political. Most restraints insure that the governor can act only with the concert of other elected officials or with some coordinated activity on their parts. Checks and balances operate throughout the system. Constitutional restraints also place limits on what executives may do.

In terms of constitutional and structural restraints, the most obvious feature of North Dakota's system is the fact that the state's voters elect some 12 state officials separate from the Governor and the Lieutenant Governor. These include the Secretary of State, the Attorney General, the State Auditor, the State Treasurer, the Insurance Commissioner, the Tax Commissioner, the Commissioner of Agriculture, the Commissioner of Labor, the Superintendent of Public Instruction, and three Public Service Commissioners. These executives are not responsible to the governor and make policies for their own departments and administer the laws as they see fit in the fields which the legislature assigns to their departments. In many other states, many of these offices are appointed by the governor and occupants may be removed by the vernor as he/she sees fit. In a 1975 study, North Dakota was ranked 39th among the 50 states in the power of the governor to control appointments of vital state offices.

FOUR-YEAR TERMS

Almost all North Dakota state officials are elected for four-year terms in presidential election years. The exceptions are the public service commissioners and the labor commissioner. The public service commissioners have six-year terms because there are three of them and one comes up for election every two years. The labor commissioner is elected in the nonpresidential years because that office was started in 1966, a nonpresidential year. The terms of elected officials begin on January 1 following their election, except since 1988, the terms of the governor and lieutenant governor began on December 15 following their election.

The governor and lieutenant governor are elected as a team with voters casting one vote for both. To serve as governor or lieutenant governor a person must have reached the age of 30 and have lived in North Dakota the five years immediately before election

GOVERNOR'S POWER

The governor's powers are enhanced when the other elected officials are of the governor's political party; they are impaired when the other elected officials are predominantly members of the opposition party. Governor Edward Schafer, the present governor, has the luxury of a compliment of elected officials that are largely of his own party. There is no guarantee that elected officials will follow gubernatorial direction even though they may be members of the governor's party. For instance during the 1987 session, the differing views of the governor and the superintendent of public instruction on state funding projections for the state's elementary and secondary schools was public knowledge. The superintendent of public instruction had a constituency to protect and a commitment to quality education. The governor had a commitment to balancing the budget and to keeping tax increases to a minimum in difficult economic times. In a sense, the fact that these high political officials won their position by election provided a check and balance that allowed for an accommodation of different political interests, both of which were legitimate.

Appointments

An important part of a governor's powers are his/her appointment and removal powers. He/She does make such important appointments as the Director of the Office of Management and Budget, the State Highway Commissioner, the Superintendent of the Highway Patrol, the Game and Fish Commissioner, the Director of Parks and Recreation, the Director of Human Services, and the State Health Officer. The governor can thus be seen as head of an executive team. The governor also has the power to fill vacancies through appointment. This can include vacancies in elective offices. Thus the governor was able to fill the vacancy in the Lieutenant Governor's office that occurred in March 1987. He is also able to fill judicial vacancies. When a vacancy occurs, a Judicial Nominating Committee consisting of members appointed by the Governor, the Chief Justice, and the State Bar Association meet to consider applicants and nominees and they provide the governor with a list of persons from which to make a choice.

Boards and Commissions

The governor is also empowered to appoint the majority of members on some 100 different boards and commissions. Again, executive powers are limited by other checks. Many of the boards and commissions must include members from different associations or professions. The governor makes the appointments but the appointments must be made from recommendations made by associations recognized in statutes. For instance, the State Health Council determines Health Department policy. The governor appoints the eleven members but one member is from nominations provided by the North Dakota Medical Association, one from nominations provided by the North Dakota State Hospital Association, one from nominations by the North Dakota State Nurses Association, and so forth. This pattern is repeated for many of the state's boards and commissions. What this implies is more checks and balances. The governor is directed to be sensitive to the needs and interests of certain groups. One area where a substantial check is put on the governor's appointment powers is in appointments t the State Board of Higher Education. Here the appointments are considered important enough that they must receive confirmation by the North Dakota Senate.

Many of North Dakota's boards and commissions, especially the important ones, also exhibit a requirement of checks and balances. Intrabranch representation insures that no one elected official can dominate the decisions assigned to the board or commission. For example, the State Investment Board which determines where the monies of the many state funds which are kept in trust (e.g., State Bonding Fund, Teachers' Retirement Funds, Worker's Compensation Fund) shall be invested is composed of the Governor, the State Treasurer, the State Land Commissioner, the Insurance Commissioner, the Executive Director of the Worker's Compensation Bureau, and representatives of teachers and public employees. As one can see, North Dakotans are very cautious in how their public monies are managed and are loath to see any one person exert control over funds. (See the Table of Contents for more information on state boards and commissions.)

Political Checks and Balances

All states exhibit a check and balance between the legislative branch and the executive branch in terms of the process of lawmaking. The governor has a major role in the passage of legislation. Before each session, the governor communicates to the legislative assembly the "state of the state" address in which problems and suggestions are outlined for the legislature's reaction. The governor can also recommend specific legislation. Finally, the responsibility for analyzing and preparing the budget of the state for the next two years, establishing priorities, and assessing revenues and expenditures, rests with the governor. Based on these projections, the legislature draws up its appropriation and tax bills.

In these functions the governor has a real presence in the legislative process even though in a separate branch of government. The governor, of course, has a direct role in legislative outcomes because of the veto power. All bills passed by the legislature are forwarded to t governor for approval or disapproval. If disapprove the bill is returned to the legislature and it then requires a vote of two-thirds in each house to pass the bill over the veto. In effect, the governor's veto power gives a vote equal to two-thirds of the entire legislature. The governor in North Dakota also has the power of the "item veto" which allows vetoing of individual items in an appropriation bill while still approving the bill's other sections. Appropriations bills are usually drafted in such a manner that an item veto would entail disapproval of an entire agency budget.

There are checks upon the governor's legislative actions. A provision of the North Dakota Constitution makes it clear that the governor can not use any threats, or bribes, or any promise to induce a member of the legislature to vote in a certain manner. A North Dakota governor can not even use the threat of a veto to sway the legislature in getting it to draft legislation to his/her liking. There also is a custom of strong disapproval of a governor "standing behind the rail" while the legislature is conducting its business. The governor is well advised to stay out of sight when the legislature is considering the governor's suggested measures.

Governors, of course, work with the legislative leaders of their own party to draft and sponsor legislation and work for its passage. They can also attempt to mobilize the legislative members of their own party through the legislative party "caucus," an informal meeting of the members of a particular party's legislative members.

While the governor's budget and tax and revenue proposals represent the opening of the law-making process, leaders and members of the North Dakota legislature are prone to say that "We are the policy-making branch of government." In fact, after the governor presents the budget and proposals, members of the political opposition in the legislature are likely to propose significant amendments. The final shape of the budget has, in most sessions, been a compromise between the governor and the opposition party.

Federal Checks and Balances

Each state is a sovereign and independent political entity, but it is also a member of these United States. As a result, national interests, United States constitutional principles (as voiced by the U.S. Supreme Court) and federal statutes and regulations govern the actions of members of North Dakota's executive branch. The Supremacy Clause of the U.S. Constitution indicates that the United States government is supreme over state law in those areas where the federal government has the authority to pass laws. The Supremacy Clause also applies to federal regulations. A federal regulation has the same force of law as an act passed by the Congress of the United States.

In terms of statutes, there are a number of statutes that directly govern the actions of executives and many relate to the 14th Amendment protection that "no state shall deny to any persons within its jurisdiction equal protection of the laws." To this end states and state executives must conform with the Civil Rights Act of 1964 and its 1972 Amendments (which prohibit any discrimination as to race, color, national origin, or sex). They must adhere to the Age Discrimination in Employment Act (ADEA), the Equal Pay Act, and the Rehabilitation Act of 1973 which prohibits discrimination in employment. The importance of these statutes is not so much that they require the states to provide equal protection to persons, but that they articulate the specifics by which the states must conform to the 14th Amendment.

State agencies are also subject to federal statutes and regulations if the state receives funds from the federal government. As a condition of receiving those funds, the state must comply with federal standards, eligibility requirements, and qualifications. Perhaps the greatest area of federal compliance comes in the human services area where the state actually administers federal programs as Aid to Families with Dependent Children, Medicaid, or the Food Stamp Program. Other areas where the state receives federal monies and must closely follow federal regulations are in vocational rehabilitation programs, and education programs funded by the federal government and administered by the Department of Public Instruction. The Highway Department must also closely conform to federal directives in terms of its maintenance of the state highways, particularly the interstate network.

Another area where federal regulation and supervision has increased has been in the area of persons and wards under the state's care and protection. Federal courts have increasingly stepped in to protect the rights of patients and residents of the State Hospital, the Grafton Developmental Center, and the group homes established by the state for the developmentally disabled. The federal courts have issued directives and established mandated goals to insure that the fundamental needs of these persons under the state's care are met.

Cultural and Economic Checks

The governor and other state executives must act in relation to political realities and the political culture of the state. That is, they must act in conformity with the expectations of the state's citizenry in terms of how government is run and how it should serve them. North Dakota is a rural state whose inhabitants exhibit a strong work ethic and who are very insistent that government officials are honest, fair, open, and above-board in all their decisions. One example of our citizenry's expectations is their strong support of the state's Open Meeting Law. This means that all meetings of any official bodies of the state must be open to the public and to the press. Thus, decisions of boards like the Industrial Commission or the Investment Board must be made in the open. All deliberations take place in a fish-bowl atmosphere. Our state's citizens exhibit what political scientists call a moralistic political culture.

North Dakotans also show strong equalitarian tendencies. They want government services to be readily accessible even in rural areas and they want an equal distribution of what government can provide throughout the state. Thus, educational services or health services considered vital must be readily available in every region. It becomes very difficult and politically unacceptable for state executives to make a decision which will close a local college or deny a particular community the permit it needs to build a local nursing home. Executive decisions must insure that no part of the state is neglected. It also has been difficult to centralize certain of the state's services and functions. Attempts to set up regional correctional facilities or regional human services centers meet with opposition because they threaten the vitality and activity of local county seats. Executives thus are forced to be sensitive to local interests, to counties, to concerns in both the eastern and western parts of the state.

Finally, the governor and other executives must be sensitive to the ideas that the citizens of the state ha in regard to fiscal matters. North Dakota citizens want their tax monies to be spent wisely and to be kept at a minimum. Older North Dakotans experienced the Great Depression which lasted from 1930-1940 and left a majority of the state's citizens in poverty. Present North Dakotans also see an agricultural recession which has forced many farmers and ranchers off the land. They are quite unsympathetic to large government expenditures and to high salaries for state executives and state employees when times are economically difficult for many. Finally, their depression experience has instilled in them a respect for both frugality and for saving. As many older North Dakotans would say, "It is good to have a full root cellar." This feeling, a root cellar mentality, has been translated into citizen expectations of our politicians and executives. The state cannot be allowed to go into debt (and that itself is mandated in the state constitution). Executives are expected to be frugal. If sums in their accounts are not expended by the end of the fiscal year, they must be turned back to the general fund of the state. Executives who turn back sums are held in higher regard. The best sign of the state's financial and political health is a healthy balance to carry over into the next biennium. This also provides the opportunity to reduce taxes. On the other hand, a low balance mandates frugality, the cutting of budgets, and the deferral of new projects or raises for public employees. In any case, consideration of the state's fiscal situation is often controlling in terms of what executives are able to propose or to accomplish under approved programs. It also controls the legislature. More often than not, the final decisions that a legislature makes in regard to the state's budget and to its tax policies wait for new projections and assessments of the state's economy.

So far we have discussed the extent to which different factors limit the governor or other elected officials to control and administer the government and to fulfill their constitutional functions. However, as officials in a rural state of small population, they nevertheless enjoy advantages that governors and executives of urban and industrial states do not have. As Joseph Schlessinger has observed, in a state with no large cities and with no large industries, there is no more important figure than the governor. In an industrialized state of high population, mayors of larg cities, heads of labor unions, corporate executives of large national corporations, political party bosses, and media spokespersons compete with the governor. The governor of a state like North Dakota also works with a political and economic elite that is small in numbers and interrelates on a very personal, almost intimate basis. It is possible for the governor of North Dakota to be personally acquainted with every legislator, every state official, every representative of local interest groups. This personal dimension of politics in our state allows for leadership to be exercised in such a way that governors can be effective irrespective of the constitutional and political constraints placed on them. Similarly other state officials become acquainted with almost all the people in the state who may be in some position to formulate legislation, provide input, influence policy, implement their policies, or review their performance. They are more able to make their policies effective through personal contact.

VOTERS ELECT STATE OFFICIALS

North Dakota voters get to elect more administrators than any other state outside of the deep South. Functions performed by the elected officials are the older functions of government. Most of the newer duties of government, such as social services, highways, and health, are headed by appointed officials. In 1986, voters approved a constitutional amendment to move the tax commissioner from the nonpartisan to the partisan ballot.

Election of Candidates

Precinct

Counties, cities and townships determine boundaries of election precincts. Individuals must vote at the polling place in their designated precinct.

The Secretary of State is Chief Election Officer for the State. Each city and county appoints an inspector who, together with members of the counties' official election board, oversees the election process.

Districts

The State of North Dakota is divided into districts. District committees of a political party are organized to coincide with the geographical boundaries of the state legislative districts.

Because both houses of the Legislature must represent an equal number of people, legislative districts have been established by the state legislature. Populations within the legislative districts must stay within a 10 percent range between the district with the highest population and the district with the least. Because of a population growth in certain sectors of the state, three new senatorial districts were created following the 1980 federal census. As a result of the 1990 federal census, legislative districts were reduced from 53 to 49.

Political Party

North Dakota has a two party political system - Republicans and Democrats. A political party consists of people that support and advocate the same philosophy and principles. Individuals that subscribe to work for a party are called partisan.

Candidates for statewide office may run independent of party affiliation if they obtain 7,000 signatures on a petition to place their name on the ballot.

North Dakota has two elective offices that, by law, are placed on a no-party ballot. They are the Superintendent of Public Instruction and the Labor Commissioner.

Platform

A candidate presents a platform to the constituents in the legislative district. A platform is based on a plan of action, statement of policy or a group of principles.

Constituents

Constituents are the body of citizens in the legislative district that elect the candidate to represent their interests.

OFFICE OF THE GOVERNOR

Qualifications for Office:

30 years of age
Qualified Elector
Must reside at the Seat of Government
Must have a minimum of five years
residency
in the state

Four-year term

Edward T. Schafer

OFFICE OF THE GOVERNOR

Introduction

As North Dakota's Chief Executive, the Governor dictates the management style for most state agencies and serves as the chief policy maker and spokesman for North Dakota state government. While the Constitution makes the governor responsible for the government of the state, it strictly limits the ability to exercise executive authority independently. This is achieved by decentralizing the Executive Branch of government. North Dakotans elect fourteen independent officeholders. They carry out the various programs of their offices according to their constitutional mandate and the will of the people, not necessarily according to the will of the head of the Executive Branch--the governor.

This makes being governor of the State of North Dakota a difficult job. The governor does not have complete authority over the Executive Branch or the administration of state government. However, the governor does control key departments of government.

Banking and Financial Institutions.

The Commissioner of Banking and Financial Institutions is responsible for the organization and regulation of all state financial institutions excluding the Bank of North Dakota. This department is charged with the responsibility of examining all financial institutions within its control and the Bank of North Dakota.

Corrections.

Created by an act of the 1989 legislature, the Department of Corrections and Rehabilitation includes jurisdiction over the state penitentiary, the state farm, probation and parole, state training school, state youth authority and a community-based rehabilitation program.

Economic Development and Finance.

Created by the 1991 legislative assembly, the Department of Economic Development and Finance consists of three major divisions: a science and technology corporation governed by a board of seven members; an economic development finance corporation governed by a board of seven members; and a division for marketing and technical assistance.

Game and Fish Department.

Provides for the propagation, distribution, protection, regulation, and conservation of the state's game and fish. The department issues hunting and fishing licenses; establishes and manages fish hatcheries and game and management areas; enforces hunting and fishing laws; promulgates rules and regulations as deemed necessary for the welfare of the game and fish populations of North Dakota.

Health and Consolidated Laboratories.

The State Health Officer serves as the chief administrative officer of the Health Department. The department is responsible for maintaining the public health laboratory; environmental control services; health planning activities; and a series of public health services--dental health, disease control, health education, health facilities, maternal and child health, nursing, and statistical services.

Highway Patrol.

The members of the North Dakota Highway Patrol have limited powers as peace officers. Generally, jurisdiction is limited to the state highway system except in certain specialized areas. Patrol officers are authorized the power of a peace officer on all state, charitable and penal institutions and on the state capitol grounds. In addition, the Patrol may exercise general police powers for all violations of law committed in their presence upon any highway, or when in pursuit of any actual or suspected law violation. The patrol is responsible for the enforcement of Public Service Commission motor carrier laws, rules and regulations, and for conducting all drivers license examinations in the state.

Human Services.

The Department of Human Services assumes the functions, duties, powers and control of the following agencies: 1) The Regional Human Service Centers; 2) the Governor's Council on Human Resources; 3) the Division of Mental Health and Retardation, (including the State Hospital); 4) the Division of Alcoholism and Drug Abuse; 5) the State Council on Developmental Disabilities; and 6) the Developmental Center in Grafton. The department assumes the role as the official state agency for the administration of federal, social and rehabilitation programs in the areas of community services, vocational rehabilitation, medical services, and economic assistance.

Job Service.

The Executive Director of Job Service supervises the unemployment compensation program and the state employment services. Job service develops and monitors programs for the following services: 1) job placement, 2) employment counseling, 3) occupational testing, and 4) food stamp registration. It also develops programs of specialized services for veterans, the handicapped, older workers, youth, minorities, the economically disadvantaged, and migrant and seasonal farm workers. It gathers wage information and collects tax contribution from employers subject to the North Dakota Unemployment Compensation law and pays weekly job insurance benefits to unemployed workers.

National Guard and Adjutant General.

The Adjutant General is responsible for the supervision of all arms and military stores. He also supervises all branches of the state militia and organizes the state guard. He acts upon the instruction of the governor who is commander in chief of the military forces of the state.

Office of Management and Budget.

The Office of Management and Budget is vested with the control and supervision of the fiscal administration of the Executive Branch of North Dakota state government. As established by statute, the Director of the Office of Management and Budget is ex officio director of the budget for the state; is responsible for the Divisions of Accounting and Payroll, Information Services, Central Personnel, Printing, Purchasing, Facilities Management, and the Office of Intergovernmental Assistance. The director also supervises State Radio Communications and Surplus Property.

Parks and Recreation.

The Parks and Recreation Office is responsible for the operation and maintenance of the entire North Dakota park system. It also obtains, maintains, manages and restores land to its natural condition under the Nature Preserves Program authorized by the North Dakota Century Code, Chapter 55-11.

Office of Tourism.

The office of Tourism promotes tourism in North Dakota by publicizing attractions, sites and tours.

Securities Commissioner.

The major role of the Securities Commissioner is to protect the investing public in North Dakota including the sale of franchises. The Commissioner regulates all securities offered and sold in this state, as well as the salesmen and companies dealing with these securities. The Commissioner also conducts investigations and brings criminal actions against violators of the state's securities law.

Transportation.

The department is administered by a Transportation Commissioner and is responsible for the planning, construction, maintenance and protection of the state highway system which includes over 7,000 miles of road. The department also enforces truck size and weight limitations and truck registration laws, conducts all drivers license examinations, administers the issuance of drivers licenses, promotes highway safety and administers the Motor Vehicle Department. The Department of Transportation is responsible for issuing photo drivers licenses and permits, maintaining records of driving violations, and suspending or revoking driving privileges when necessary and registering all vehicles licensed in the state. The State Fleet Services are under the auspices of the Department of Transportation.

Worker's Compensation Bureau.

The bureau is managed by an Executive Director appointed by the governor. As administrator of the North Dakota Worker's Compensation laws, the bureau collects premiums from employers and adjusts rates for each category of jobs to provide sufficient funds to pay for job-related injuries and illnesses. The Bureau provides workers compensation for eligible injured employees; cooperates in making arrangements for rehabilitation of persons injured on the job; inspects businesses for compliance with safety rules and regulations; classifies employment with respect to degree of hazard; and determines risks involved in the various classifications. The bureau also administers the Uniform Crime Victims Reparations Act, North Dakota Century Code Chapter 65-13. This legislation provides compensation to innocent victims of criminal attack who are not adequately covered by insurance.

Executive Order

Besides boards, commissions and task forces initiated by the legislature, the governor has the authority by executive order to create boards and commissions and task forces. By executive order the governor has the authority to issue emergency disaster directions to aid in disaster relief, quell riots and maintain peace when necessary.

The governor also has authority by executive order to assign responsibility to the lieutenant governor such as chairing boards and commissions, delegated to the governor by law. The governor also has the authority to rescind executive orders made by a previous governor.

Summary

The job of governor requires a complex blend of talents and skills. First of all, the governor is an administrator with control over much of the state's budget. Secondly, the governor is a coordinator. The influence of the position allows the governor to bring various groups and individuals together, encouraging them to work together for a common goal.

The governor is a manager, with responsibility for personnel and the operation of several agencies; commands the state's militia, or the National Guard, when they are not in the service of the federal government; and acts as the state's ambassador to other states and, in many cases, to foreign governments.

The governor has another influential method of focusing attention on priorities. At the beginning of each legislative session, the governor communicates the condition or state of the state to the Legislative Assembly. This is one method of formulating and communicating proposals for public policy. Once the legislature is in session, the governor helps provide information from the agencies of the executive branch on bills being considered.

Inasmuch as most of the programs enacted by the legislature are carried out by agencies in the executive branch, this information and cooperation can be invaluable.

The governor's role, like that of the entire executive branch, is one of communication, coordination and cooperation. The governor definitely holds a leadership role in defining the condition and priorities of the state both through the executive budget and the State of the State message. When added to the veto power, these functions make the governor an important participant in the legislative process.

Boards and Commissions

Among the many state commissions chaired by the governor are the Capitol Grounds Planning Commission, the Emergency Commission, the Indian Affairs Commission, the Industrial Commission, Investment Board, State Water Commission, Board of Equalization and the Pardon Board. Since the governor is unable to personally attend all committee and commission meetings, some are assigned to the lieutenant governor.

In conjunction with the Board of Pardons, the governor has authority over such matters as extradition, pardons, reprieves, and commutation of sentences, except in cases of impeachment or treason.

OFFICE OF THE LIEUTENANT GOVERNOR

Qualifications for Office:

30 years of age
Qualified Elector
Must reside at the Seat of Government
Must have a minimum of five years
residency
in the state

Four-year term

Rosemarie Myrdal

OFFICE OF THE LIEUTENANT GOVERNOR

The lieutenant governor is elected for a four-year term on a joint ballot with the governor. The lieutenant governor is the presiding officer of the Senate and votes only in the case of a tie. Frequently, the lieutenant governor is called upon to represent the governor at state and public functions. Anytime the governor travels beyond the state's borders, the lieutenant governor becomes acting governor with full executive authority. In case of death or resignation, or any other time the governor is unable to perform assigned duties, the lieutenant governor assumes the position of chief executive.

At present, the lieutenant governor has been assigned responsibility to serve as chair of the North Dakota Centennial Trees Commission, the Capitol Grounds Planning Commission, the Human Services Advisory Board, the State Investment Board, the Children's Services Coordinating Committee, and the Yellowstone-Missouri Fort Union Commission. Often the lieutenant governor substitutes for the governor in handling other executive duties, such as chairing meetings, giving speeches, and greeting visiting delegations.

SECRETARY OF STATE

Qualifications for Office:

25 years of age
Qualified Elector
Four-year term

Alvin Jaeger

SECRETARY OF STATE

Introduction

The secretary of state is one of few state officials, executive or judicial, whose office was established by the Organic Law of March 2, 1861 providing for government of the Territory of Dakota. The secretary of the territory was appointed by the President of the United States.

The Constitution of North Dakota, adopted October 1, 1889, has since provided for the election of the secretary of state. In addition, the constitution provides for specific duties under Article III, Powers Reserved to the People; under Article V, the Executive Branch; and under Article IX, Trust Lands. Almost 500 specific statutes and about a dozen legislative rules further provide for duties that must be completed by the secretary of state. The duties, as assigned, have been briefly summarized by functions below. The following includes statistical and fiscal data of the office.

Major Functions

Contractor Licensing.

The secretary of state's office administers the contractor licensing law. The office processes all documents including the application, bond, and worker's compensation statement. Four classes of licenses are issued based upon the value of each contract the contractor will be completing. Each licensed contractor must renew their license by February first each year for a fee equal to twenty percent of the original license fee. Contractors who fail to renew their license by the deadline may renew their license up to May first by paying the renewal fee and a penalty fee. No licenses can be renewed after May first.

Corporations.

The secretary of state reviews and processes proposed articles of incorporation or applications for certificate of authority submitted for domestic and foreign corporations, domestic and foreign nonprofit corporations, and domestic and foreign cooperatives, and professional corporations to assure the propriety and protection of the public interests according to law. This division also reviews and processes documents for: state banks, state credit unions, lodges, fraternal organizations, churches, mutual aid cooperatives, electric cooperatives, telephone cooperatives, regional airport authorities, insurance companies, savings and loan associations, investment trust companies, irrigation district authorities, vector control districts, city letters patent or incorporation of the cities, city home rule charters, county home rule charters, municipal power agencies, limited partnerships, fictitious name certificates, trade names, trademarks, soil conservation districts, cooperative grazing associations, emergency housing corporations, building and loan associations, and farm corporations.

Uniform Commercial Code.

The secretary of state reviews and processes uniform commercial code filings and related documents which protects collateral of secured parties, (banks or lending agencies) covered by the papers; files states tax liens against personal property and federal tax liens against individuals, partnerships, or corporations.

Such filings are terminated when requested by the second party. Financing statements are effective for five years and can be continued for five-year periods indefinitely. Financing statements that have expired and not continued are pulled from the files according to law. Individuals can request information on any or all financing statements on file concerning any debtor.

Elections.

The secretary of state serves as the state's chief election officer. The major duties include:

1. Certify to county auditors the state, district, and county officials to be nominated or elected in the primary, general, or special elections.

2. Receive and file nominating petitions of candidates for state office.

3. Receive and file certificates of nomination or certificates of endorsement for congressional or state office candidates.

4. Certify to county auditors the names of candidates to be on the ballot for the primary, general or special elections.

5. Process and certify constitutional, initiative and referral petitions. The secretary of state must approve the petitions as to form before the petitions are circulated. Upon receipt of the filed petitions, the secretary of state has thirty-five days to approve the petition question for ballot placement. During that time, postcards are sent to the petition signers, or phone calls may be made, to validate the signatures.

6. Certify the complete text and ballot wording of constitutional, initiated, or referred measures that are to be placed on the ballot.

7. Send to the county auditor the forms needed to submit the official county election results to the secretary of state.

8. Receive and compile the county official abstract of votes for canvass by the state canvassing board.

9. Receive and compile the county expenses and statistical reports.

10. Convene the state canvassing board within seventeen days after each election to certify the official results of the election.

11. Send Certificates of Nomination to each person nominated for various offices in the primary election.

12. Send Certificates of Election to persons declared elected by the state canvassing board for state, judicial district, legislative district, congressional, or soil conservation districts.

13. Publish the official election results in the Bismarck Tribune.

14. File oaths of office of state officials, judicial and legislative office holders.

15. Develop and implement training programs for precinct election officials in the state.

16. Prepare voting information guidelines for voters.

17. Convene an annual state election conference for county auditors to discuss uniform implementation of state election laws and policies.

18. Publish and distribute to each county an election calendar, a manual on election procedures, and maps of all election districts.

19. Investigate nonperformance of duties or violations of election laws by election officials.

20. Require reports from county auditors on election matters as deemed necessary.

21. Establish accounting procedures designed to show all election expenditures incurred by the state and counties.

22. Prepare and publish biennial reports on the conduct and costs of elections in the state, including expenses and statistics.

23. Establish standards for all election machinery, locations, and supplies, including but not limited to ballots, wrappers, seals, stamps, ballot boxes, pollbooks, tally sheets, reports, voting machines, electronic voting systems, and voting places.

24. Prepare a statement concerning the accessibility of voting places in each county in the state.

Political Committee Registration.

Political committees must register their names and addresses with the secretary of state. Political committees are groups of persons which receive donations or spend money to help candidates win elections. Candidates often utilize these committees to run their campaigns such as the "Schafer for Governor" committee or for the "Friends of Byron Dorgan" committee. These are generally referred to as candidate committees.

Political committees can also be groups of people who collect donations or spend money to try and convince other people to vote a certain way on an issue at an election. For example, a committee called "Citizens for Seat Belts" might try and persuade voters to enact a mandatory seat belt law. If they collected donations and spent money for that purpose they would have to register with the secretary of state.

Other types of political committees with registration requirements are groups commonly known as political action committees. These are special interest groups formed to make campaign contributions to candidates running for election. Examples include the National Rifle Association (NRA) Political Victory Fund, or the Coca-Cola Company Non-Partisan Committee for Good Government.

The purpose of registration for these committees is so the secretary of state can monitor whether they are submitting reports disclosing the amount of money they have collected and spent. Registration allows the secretary of state to send a notice to the committee reminding them that they have a reporting deadline approaching or that they have failed to submit a required report.

Campaign Disclosure Reports.

Process all campaign disclosure reports for candidates for state office or their campaign committees, for political parties, and for political committees. This may include income and expenses.

Statements of Interest

File statements of interest for candidates of statewide elective office, excluding congressional candidates, and of the governor's appointees. The persons must list principal occupations; financial interests in businesses, trusts, associations, or other institutions with whom closely associated; and names of business offices or directorships held in the past year.

Charitable Solicitation Licensure.

The secretary of state licenses charitable organizations soliciting money, pledges, or property of any kind or value in North Dakota; investigates the financial responsibility, experience, character, and general fitness of all applicants, and file annual reports of licensed charities showing total monies collected and expended by those organizations.

Athletic Commissioner.

The secretary of state supervises professional boxing and sparring exhibitions in the state. Boxers, managers, referees, ring announcers, and promoters are licensed. The licenses expire after one year.

Lobbyist Registration

The secretary of state registers lobbyists who attempt to influence legislation directly or indirectly in any way; files applications, letters of authorization of those firms the lobbyists represent, and an annual report. The office provides a list of lobbyists to the chief clerk of the house and the secretary of the senate on or before the thirty-fifth legislative day.

Notary Commissions.

The secretary of state appoints notaries public in each county of the state to six-year terms, retains all papers filed by the notary applicant, and sends out forms when the commissions are about to expire so the notary can seek reappointment. Notaries have power and authority statewide to administer oaths, perform certain official acts, and give official recognition and authenticity to acts and documents executed in their presence.

Absent Persons Mineral or Royalty Interests in Land.

The secretary of state registers post office address of persons who own mineral, lease or royalty interests on land in North Dakota.

International Wills.

The secretary of state registers and preserves international wills of citizens for later execution and disposition according to law.

Facsimile Signatures.

The secretary of state files documents containing signatures of state officials, certified by that officer under oath, that the signature is their own and can be used for facsimile purposes for official state business.

Federal Census Reports.

The secretary of state compiles federal census reports on state, county, city, and township populations.

Federal Election Reports.

The secretary of state compiles, under federal law, monthly, quarterly, annual, pre and post election reports for: all candidates for president or congress, their principal campaign committee or authorized committees, political party campaign committees, and political action committees representing various organizations that support candidates for office.

Public Meetings.

Notices of public meetings of state agencies, boards, and departments are filed in the office of the secretary of state.

Service of Process.

The secretary of state completes service of process, or legal papers, on domestic and foreign corporations, non-profit corporations, cooperative associations, or limited partnerships when such businesses fail to appoint or maintain a registered office or registered agent. The secretary of state serves as agent for service of process for out-of-state contractors, worker's compensation, out-of-state chemical applicators, out-of-state mineral employers, carnivals, fairs, circuses, or other out door shows in the state, savings and loan associations, building and loan associations, geophysical exploration companies, and the state fair association. The office keeps a record of all processes, demands, or notices and charges a fee for such service.

Legislative Duties.

The secretary of state serves as custodian of the original documents of the state, including the constitution, and the original copies of all laws and resolutions introduced in the legislative assembly and other records. Duties assigned by the legislative assembly include:

1. Certify the names of all persons to whom certificates of election were issued to each hous of the legislature;

2. Retain two sets of the legislative journals of each house, certify their receipt, and forward the remaining journals as decided by legislative rule;

3. Receive, record, and store all books, bills, resolutions, documents, and papers of each house of the legislature;

4. Provide lists of registered lobbyists to each house;

5. Provide to members of the legislative assembly all public documents as provided by law including the North Dakota Century Code and supplements, session laws of the last legislative session, journals of the last session, latest Blue Book, and the North Dakota Administrative Code and supplements;

6. Provide to the legislative assembly or its committees public documents as requested;

7. Distribute laws, resolutions, or other documents of the legislative assembly;

8. Perform such other duties as may be assigned to the secretary of state by the legislative assembly.

Additional Duties

1. Keeps the enrolled copy of the original state constitution.

2. Keeps the acts and resolutions of the legislative assembly until the law allows transfer to the historical society.

3. Preserves and supervises the use of the Great Seal of the state of North Dakota.

4. Keeps all books, records, deeds, parchments, maps, and papers deposited in the secretary of state's office.

5. Affixes the Great Seal with the secretary of state's attestation to commissions and other public instruments on which the official signature of the governor is required.

Keeps a registry of and attests to the official acts of the governor including filing proclamations, appointments, executive orders, extraditions and writs.

7. Records all conveyances made to the state.

8. Files receipts for all books distributed by the secretary of state and directs county auditors to do the same.

9. Keeps a fee book for all fees, commissions, and compensation earned, collected, or charged.

10. Furnishes certified copies of all or any part of any law, record, or other instrument filed, deposited, or recorded in the secretary of state's office.

11. Completes and forwards a biennial report to the governor of office duties completed and moneys received and expended.

12. Keeps a registry of cities.

13. Serves as governor if there is a vacancy in the office of governor and lieutenant governor, or if both have left the state.

14. Files oaths of office and statements of interest of governor's appointees.

Public Printing Division

The secretary of state is responsible for working with the legislative council to compile, authenticate, publish, distribute, and store all publications of law for the state of North Dakota. These include the biennial session laws of North Dakota, North Dakota Century Code and replacement volumes and supplements, North Dakota Administrative Code and supplements, legislative assembly House and Senate journals, North Dakota Blue Book, and Constitution of the State of North Dakota. The above are distributed to members of the legislative assembly; state constitutional officers; judges of the supreme court and district courts; state departments, boards, or agencies; legislative assembly officer; and county officers as required by law. The secretary of state also sells publications of the session laws, administrative code, and Blue Book.

Boards and Commissions

The secretary of state serves as a member of:

1. The state canvassing board, which canvasses state, judicial, legislative and congressional election results after all statewide or special elections.
2. The board of university and school lands which has full control of the selection, management, appraisal, rental, sale, or disposal of public land and full control of the proceeds from the rental, sale, or lease of that land.
3. The emergency commission which votes to allow line item transfers of appropriations to state agencies, extends emergency monies to agencies, and accepts new federal funds for state agencies.
4. The state historical board as an ex-official member to protect state interests regarding moneys, collections, and acquisitions of the historical board.
5. The board for trial of presidential electors as clerk of the board.
6. The Theodore Roosevelt Roughrider Award where selections are made for the award and all records of the recipients are kept by the secretary of state.

STATE AUDITOR

Qualifications for Office:

25 years of age
Qualified Elector
Four-year term

Robert Peterson

STATE AUDITOR

Introduction

The State Auditor is a constitutional officer of the State of North Dakota and is responsible for performing the postaudit of all financial transactions of state government, detecting and reporting any defaults, and determining that expenditures have been made in accordance with law and appropriation acts.

Major Functions

1. Performs or provides for the audit of the general purpose financial statements and a review of the material included in the annual financial report of the state; performs or provides for the audits and reviews of state agencies, including occupational or professional boards provided for by law. The state auditor shall audit or review each state agency once every two years. The state auditor may conduct any audits required by the federal government.

2. Performs or provides for performance audits of state agencies as determined necessary by the state auditor or the legislative audit and fiscal review committee. A performance audit includes reviewing elements of compliance, economy and efficiency, and program results. The purpose of such an audit is to determine whether an agency is complying with applicable laws and legislative intent, is managing its resources efficiently, and whether the agency's programs are achieving desired results.

3. Reports audit findings to the governor and the office of management and budget as prescribed by section 54-06-04 or more often as circumstances may require.

4. Performs postaudits of political subdivisions and such other duties as prescribed by law. Political subdivisions include cities, counties, school districts, parks, libraries, airports, or any entity that receives public money. If the political subdivision so chooses, it may have a private accounting firm conduct the audit under guidelines established by the State Auditor.

5. Performs audits of oil, gas, and coal on federal lands in North Dakota. The Federal government pays all salaries and expenses. The state auditor's office does the auditing, and the proceeds are shared equally.

Boards and Commissions

The state auditor serves on the Tax Equalization Board.

PUBLIC SERVICE COMMISSIONERS

Qualifications for Office:

25 years of age
Qualified Elector
Six-year term, with one commissioner's term expiring every two years

Bruce Hagen

PUBLIC SERVICE COMMISSION

Leo Reinbold

Susan Wefald

Introduction

In 1885, Dakota Territory established a Board of Railroad Commissioners with general jurisdiction over railroads, sleeping car companies, express companies and telegraph companies. At statehood, the Constitution of North Dakota provided for election of a Board of Railroad Commissioners with powers and duties prescribed by law. In 1940, the name was changed to Public Service Commission.

The Legislature has significantly broadened the duties of the Public Service Commission. Today, the Commission has jurisdiction over railroads, contract and common motor carriers, telecommunications companies, pipeline, electric and gas companies, water and heating companies, grain elevators and warehouses, weights and measures, public auctioneers and auction clerks, siting of energy plants and transmission facilities and reclamation of mined lands.

The Commission does not have jurisdiction over the rates of rural electric cooperatives or most small telephone companies.

Major Functions

Abandoned Mine Lands Division.

The Abandoned Mine Lands (AML) Division administers a federal program to remove hazards and environmental problems associated with abandoned mines. The division investigates AML sites, designs reclamation projects, submits applications for federal funds and manages construction projects under public contracts.

Consumer Affairs Division.

The Consumer Affairs Division responds to complaints, inquiries and requests for information about activities or companies within the Commission's jurisdiction. It promotes consumer understanding of the regulatory process and facilitates public participation.

Licensing and Rail Division.

The Licensing and Rail Division administers licensing, inspection and insolvency of grain elevators, roving grain and hay buyers, and storage companies. This division handles licensing of auctioneers and auction clerks and also represents the interests of the public in railroad matters.

Public Utility Division.

The Public Utility Division provides technical and administrative assistance to the Commission in regulating telecommunications, electric and gas utilities.

The division makes recommendations on applications for the siting of energy conversion and transmission facilities and on enforcement of Commission orders permitting electrical powerlines, gas pipelines, and electrical generation plants.

Reclamation Division.

The Reclamation Division is responsible for the administration and enforcement of state environmental law regarding surface coal mining and reclamation operations. It also administers Commission authority under the Surface Owner Protection Act.

Motor Carrier Division.

The Motor Carrier Division deals with commercial motor transportation of people and property over North Dakota highways. The division supervises rates and practices of carriers operating wholly within the state, and serves the Commission in representing North Dakota's transportation interests before federal agencies.

Testing and Safety Division.

The Testing and Safety Division provides a fair basis for commercial transactions by maintaining the necessary standards of weight, volume and length. It tests commercial weighing and measuring devices for accuracy to protect both the buyer and seller. It also administers the gas distribution and intrastate pipeline safety program.

Duties and Responsibilities

The three Public Service Commissioners are statewide elected officials, each serving a six-year term with one Commissioner's term expiring every two years. The Commissioners are responsible for the exercise of the powers and duties of the Commission. Although the workload is divided among the Commissioners, each Commissioner exercises equal power and shares equal responsibility for each decision.

The portfolios of the present Commissioners are:

Leo M. Reinbold: president, gas utilities, pipeline companies, abandoned mine lands and motor carriers

Susan Wefald: electric utilities, grain elevators, reclamation, and consumer affairs.

Bruce Hagen: telephone utilities, railroads, weights and measures, and auctioneers

Executive Secretary to the Commission

The public service commission appoints an executive secretary to the commission, who coordinates operations and communications for the commission.

Commerce Counsel

The attorney general is the attorney for the commission but based on commission recommendation, has appointed commerce counsel to act as legal advisors to the commission.

Commission Divisions.

The Commission has seven divisions:

Abandoned Mine Lands Division
Consumer Affairs Division
Licensing and Rail Division
Public Utility Division
Reclamation Division
Motor Carrier Division
Testing and Safety Division

ATTORNEY GENERAL

Qualifications for Office:

25 years of age
Qualified Elector
Four-year term

Heidi Heitkamp

OFFICE OF THE ATTORNEY GENERAL

Introduction

The Attorney General is the chief legal officer of the State of North Dakota. The Attorney General represents the state and the interests of North Dakotans in civil and criminal legal actions. He or she may take any action deemed necessary to protect the rights of North Dakotans, to defend the actions of state officials, and to ensure public order.

Major Functions

The Attorney General's responsibilities include:

1. Serving as the state's legal advisor by issuing written opinions on questions concerning the state's laws and constitution.
2. Serving as legal counsel for North Dakota's state agencies, boards and commissions.
3. Proposing new legislation, supporting the passage of public interest bills, and providing legal assistance to legislators during the legislative session.
4. Representing the state in civil and criminal lawsuits.
5. Assisting local government in criminal investigations and drug enforcement.
6. Protecting the rights of consumers through the Consumer Protection Section.
7. Regulating charitable gambling.
8. Serving on several state boards and commissions including the Industrial Commission, the Board of University and School Lands and the Pardon Board.

The North Dakota Office of Attorney General is divided into seven divisions.

State and Local Government Division.

The State and Local Government Division is responsible for the successful and timely preparation, coordination, and distribution of a broad range of legal services to state agencies and professional and occupational boards, and has primary responsibility for all attorney general's opinions and letter responses.

The division also responds to requests for noncriminal legal assistance from state's attorneys, city attorneys, and city governing boards. Attorneys assigned to the division are responsible for providing the necessary legal advice and assistance to governmental agencies served by the division. However, when agencies

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become involved in litigation, either civil or criminal, a State and Local Government Division attorney coordinates the activities with respect to that litigation with the Criminal and Regulatory Division or the Civil Litigation Division, as appropriate.

Criminal and Regulatory Division.

The Criminal and Regulatory Division is comprised of the following four sections.

Gaming Section
Licensing Section
Consumer Protection and Antitrust Section
Criminal Law Section

The Criminal and Regulatory Division is responsible for the enforcement and application of all laws relating to retail alcoholic beverage licensing, tobacco licensing, gaming licensing, and transient merchant licensing, as well as those laws involving consumer protection and antitrust. The attorneys assigned to this division provide legal assistance to those sections of the Office of Attorney General involved in matters such as gaming, consumer protection and antitrust, and licensing.

The division is also responsible for matters involving criminal laws, law enforcement, and state's attorneys. Attorneys assigned to this division are responsible for meeting the office's responsibilities to the various law enforcement agencies and for issues of criminal law.

Civil Litigation Division.

The Civil Litigation Division is supervised by the Solicitor General and is responsible for the overall coordination of civil litigation and appellate cases involving or affecting the State of North Dakota. These responsibilities include:

1. Civil litigation brought against the state, state agencies, state officials, and state employees (other than Natural Resources and Indian Affairs litigation).

2. Representation of agencies at administrative hearings (other than Natural Resources and Indian Affairs, gaming, liquor licensing, and consumer protection hearings).

3. Appeals to state and federal courts (other than those involving cases in Natural Resources and Indian Affairs, gaming, liquor licensing, and consumer protection).

4. Debt collection and foreclosures.

5. Representing and advising state agencies with regard to personnel-related questions and litigation.

Natural Resources and Indian Affairs Division.

The Natural Resources and Indian Affairs Division is responsible for legal issues involving agriculture, water, oil and gas, environment, game and fish, and state-owned land and minerals. It is also responsible for providing advice to state officials on Indian issues.

Bureau of Criminal Investigation.

The Bureau of Criminal Investigation is comprised of the following five sections:

Criminal Section
Narcotics Section
Training Section
Grants Management Section
Criminal Justice Information Services Section

The Bureau of Criminal Investigation is responsible for conducting criminal and narcotics investigations, training criminal justice personnel, maintaining training and licensing records for peace officers, administering federal grant funds for criminal justice programs, and maintaining criminal justice information systems.

Finance and Administration Division.

The Finance and Administration Division is responsible for supervising all office financial and administrative functions. It handles all office budget matters, data and word processing duties, support staff duties, and nonlegal employee personnel matters.

Fire Marshal Division.

The State Fire Marshal is appointed by the Attorney General and supervises the operation of the Fire Marshal Division. The division is responsible for enforcing state laws for prevention of fires; coordinating resources for large, rural wildland fires; storage, sale, and use of combustibles and explosives; installation and maintenance of fire alarms and fire extinguishing equipment; adequacy of exits from public buildings; investigation of arson and the cause and origin of fires; and education on hazards of fire. The division also has responsibility for the state's emergency response to hazardous materials incidents and hazardous materials training.

North Dakota Racing Commission.

Although not a division, the North Dakota Racing Commission is located within the Office of Attorney General. The Racing Commission is appointed by the governor and is responsible for providing for racing under the certificate system; setting racing dates; adopting and administering rules for the regulation of live and simulcast parimutuel racing; administering special funds (breeders, purse, race promotion); licensing all participants in live and simulcast racing; regulating bids on licensed activities; and considering and authorizing all proposed extensions, additions, or improvements to facilities owned or leased by a licensee. The Racing Commission also is responsible for licensing live and simulcast horse racing under a racing addendum to a tribal gaming compact if the tribe so elects. The Racing Commission appoints a director of racing who is responsible for carrying out the duties and responsibilities of the commission.

Boards and Commissions

The Attorney General is a member of numerous boards and commissions, including: Board of Pardons, Board of University and School Lands, Controlled Substances Board, Industrial Commission (which oversees all state-owned industry), Judicial Council, Indian Affairs Commission, Commission on Medical Competency, and Children's Coordinating Cabinet.

AGRICULTURE COMMISSIONER

Qualifications for Office:

25 years of age
Qualified Elector
Four-year term

Sarah Vogel

AGRICULTURE COMMISSIONER

Introduction

The office of Commissioner of Agriculture and Labor was established by the North Dakota Constitutional Convention in 1889. In 1965, voters amended the constitution, dividing the office into the separate offices of commissioner of agriculture and commissioner of labor and lengthening the term of office from two years to four years.

Originally, the office was a regulatory and record keeping agency, but over the span of a century, the responsibilities of the commissioner of agriculture have widened to include a leadership role in the formulation of policies affecting the state's agricultural industries; advocacy of the needs and concerns of farmers and ranchers on the state and national levels; the administration of fair, timely and low-cost mediation services to farmers and ranchers; the promotion and marketing of North Dakota products, and the dissemination of information concerning agricultural issues to the governor, legislature and the general public.

The commissioner directs an agency that is commonly known as the Department of Agriculture. The commissioner establishes the department's general policies, procedures and budget, and serves as an advocate for North Dakota agriculture in the formulation of public policy. The commissioner is also a member of a number of state boards and commissions, most notably the North Dakota Industrial Commission, the State Water Commission and the Board of Tax Equalization.

The Department of Agriculture is made up of the following divisions:

Administration.

Administration provides direction, accounting, personnel services, research, public information and clerical services to other divisions. Administration also includes the Marketing Division, the Research and Policy Division and the Ag in the Classroom program.

Marketing Division

Marketing develops and expands markets for North Dakota products, especially value-added products made from agricultural commodities. The division provides North Dakota companies with technical assistance and in promotional efforts on a national and international basis. The division administers the Pride of Dakota program which promotes buyer awareness of North Dakota products both within and outside the state.

Research and Policy Division

Research and Policy conducts research and provides other information for the development of public policy on both the state and federal levels. The division also conducts the department's public information efforts, including publications and press releases.

Ag in the Classroom Program

Ag in the Classroom provides training and materials for teachers to help North Dakota students better understand their state's leading industry.

Agricultural Mediation Service.

The North Dakota Agricultural Mediation Service provides low-cost and confidential assistance to financially troubled farmers and ranchers. AMS personnel provide a wide variety of services ranging from financial counseling to mediating settlements between debtors and lenders. AMS also provides negotiation and mediation services in other areas of contention, such as landlord-tenant disagreements and disputes between farmers and government agencies.

Plant Industries Divisions.

Noxious Weed

Noxious Weed administers state cost-share programs to control harmful weeds, and assists county weed boards in their efforts.

Pesticide

Pesticide enforces state and federal regulations regarding the use, storage and disposal of pesticides, and acts as a liaison between farmers, applicators, dealers and federal agencies. The division also directs Project Safe Send, a program to help farmers get rid of unusable pesticides, and licenses and inspects anhydrous ammonia bulk facilities.

Plant Protection

Plant Protection works to protect crops and grasses from losses caused by plant pests. The division also certifies products as pest-free, and monitors nursery stock to ensure it is pest-free.

State Waterbank Program

State Waterbank Program offers incentives to landowners to preserve and protect fragile wetland environment through short-term leases.

Animal Services Divisions.

Livestock

Livestock issues licenses and sets bonds for livestock dealers and auction markets, and enforces laws pertaining to livestock dealings.

Dairy

Dairy promotes and regulates the dairy industry, including dairy farms, haulers and processing plants through inspection, testing and licensing. Division personnel also enforce state and federal poultry laws and regulations.

Apiary

Apiary licenses beekeepers, registers beeyard sites and acts as a liaison between the honey industry, pesticide applicators and landowners.

Animal Damage Control

Animal damage control is a cooperative effort of state and federal government to control wild animal depredation on livestock and poultry and wild bird damage to crops.

Boards and Commissions

The Commissioner of Agriculture is a member of the following boards and commissions:

- North Dakota Industrial Commission
- State Water Commission
- North Dakota Board of Equalization
- North Dakota Emergency Commission
- North Dakota Agricultural Products Utilization Commission
- North Dakota Dairy Promotion Commission
- North Dakota Seed Commission
- North Dakota Pesticide Control Board
- North Dakota Barley Council
- North Dakota Edible Bean Council
- Northern Crops Council
- North Dakota Potato Council
- North Dakota Sunflower Council
- North Dakota Soil Conservation
- North Dakota Soybean Council
- Agricultural Conservation and Adjustment Committee
- Agriculture in the Classroom Council
- North Dakota-Saskatchewan Boundary Advisory Committee
- State Intermodal Transportation Team
- North Dakota Wheat Commission
- North Dakota Disaster Emergency Board
- Wetland Mediation Advisory Board
- USDA Food and Agriculture Council
- Honey Promotion Council
- Waterbank Advisory Board
- Interstate Compact on Pest Control
- State Seed Mediation Board

STATE TREASURER

Qualifications for Office:

25 years of age
Qualified Elector
Four-year term
Only office limited to two consecutive terms in office

Kathi Gilmore

OFFICE OF STATE TREASURER

The State Treasurer is a Constitutional officer of the state. It is the only office where the individual is limited to serving two consecutive terms.

Introduction

The State Treasurer serves as custodian for all state funds. The Treasurer is the state alcohol beverage administrator responsible for regulating the manufacturers, suppliers and wholesalers in the alcohol beverage industry and collects the business privilege tax paid by wholesalers. The Treasurer is also responsible for the investment of all the state's general and special funds, as well as several trust funds, such as the Veterans' Postwar Trust Fund.

Major Functions

The divisions and primary functions of the State Treasurer's Office and their functions are as follows:

Accounting and Receipting.

Receipts and deposits all income for all state agencies into the state's accounting system. Provides reconcilement for state accounts. Responsible for the proper management of all accounting, human service and payroll checks to agencies under the central accounting system.

Securities and Investment.

Provides daily investment management services for all state agencies. Special investment services are provided for trust funds and/or state agencies allowed to invest funds outside the Bank of North Dakota. Custodian for certificates of deposits acquired for various trust funds.

Alcohol Beverage Control.

Collects alcohol beverage taxes and reconciles collections with manufacturers' reports, issues wholesaler licenses, reviews promotional programs and works with the wholesaling and manufacturing/supplier segments of the industry relating to state laws.

Administration.

Coordinates interdepartmental activities.

Tax Collections and Distribution.

The State Treasurer is responsible for collection of alcohol beverage taxes and air transportation taxes. In addition, the Treasurer has the responsibility for distribution to the following local subdivisions of government: Highway Tax, Coal Severance Tax, Estate Tax, Coal Conversion Facilities Tax, Cigarette Tax, Oil and Gas Gross Production Tax, Homestead

Tax Credit, Personal Property Replacement Tax, State Revenue Sharing, Township Highway Aid Fund, Oil Extraction Tax, Transmission Lines Facilities Tax, City Lodging/Restaurant Tax, City Occupancy Tax, City Sales Tax, Airline Tax and Flood Control Distribution.

Boards and Commissions

The State Treasurer serves as a member of the following entities by law: Board of Tax Equalization, State Historical Board, State Investment Board, State Canvassing Board, Teachers' Fund for Retirement Board, and the Board of University and School Lands. The current Treasurer is a member of the National Association of State Treasurers and the National Conference of State Liquor Administrators and Business and Professional Women. She is serving on the Organizational Planning and Coordinating Committee of the Council of State Governments National Committees and Task Forces for 1993.

INSURANCE COMMISSIONER

Qualifications for Office:
25 years of age
Qualified Elector
Four-year term

Glenn Pomeroy

INSURANCE COMMISSIONER

Introduction

The Insurance Commissioner is responsible for the regulation of the insurance companies and agents doing business in the State of North Dakota. Included in these duties are the authority to interpret and apply the laws dealing with the insurance industry and to aid policyholders in receiving fair treatment during disputes. In addition, the commissioner must license, supervise, and examine companies for business conduct and financial stability. Both the State Fire and Tornado Fund, which provides property insurance coverage for political subdivisions, and the State Bonding Fund, which provides blanket bond coverage for public employees and officials, are administered by the commissioner. The Unsatisfied judgment Fund is also under the jurisdiction of the commissioner, as is the Petroleum Tank Release Fund.

Major Functions

The insurance commissioner's primary function is the regulation of insurance companies and agents doing business in the State of North Dakota. In addition, commissioner monitors prepared legals, reciprocal or inter-insurance exchanges, medical malpractice, self-insured government pools, fraternal benefit societies, nonprofit health service corporations, title insurance costs, insurance premium finance costs, state guaranty associations, surplus lines, risk retention groups, purchasing groups, and Preferred Provider Organization's (PPO's) of insurance companies and insurance agents doing business in the State of North Dakota. Along with company licensing, the commissioner requires that companies submit annual statements of their financial condition and a general summary of business transacted in the previous year. Each year an abstract of statement is required. This report is published in the official newspaper of each judicial district in which the company does business. Upon yearly review, license renewal may be withheld if a company cannot prove its public financial responsibility.

The commissioner cooperates with other state insurance departments in the regulation and financial examination of companies nationally through the National Association of Insurance Commissioners

(NAIC). An exchange of insurance laws and regulations is encouraged on a national level to help states develop better and more uniform laws in the business of insurance regulation.

All companies (except fraternals) are subject under state law to a gross premium tax. The current tax rate, effective July 1, 1987, for life insurance companies is two percent and one and three-quarter percent for accident, property and casualty companies. All premium tax revenue is collected by the Insurance Department and is deposited into the state's general fund.

The commissioner licenses both resident and non-resident agents. Resident agents must pass an examination that assesses entry level competency and thereafter, licenses may be renewed annually in accordance with the law. Agents are required to take both pre-license and continuing education courses. The Insurance Department has the responsibility of approving instructional courses for educational credit and for monitoring compliance with the continuing education requirements.

Policy forms and rates are required to be filed with the Department of Insurance for review. All policies must be approved before companies can sell them in North Dakota. This protects the North Dakota consumer from unfair forms or excessive rates and assures that all policies are in compliance with North Dakota statutes and regulations.

The Consumer Complaint Division of the Insurance Department aids policyholders in receiving fair treatment from the insurance industry. Complaints are centrally received through the mail and a toll-free. consumer phone line. Complaints are routed to the appropriate investigator for resolution. Upon discovery of violations of law or administrative rule, an administrative hearing is held and penalties may then be applied by the commissioner.

The Senior Health Insurance Counseling program works with sponsoring organizations in communities to recruit volunteers who receive 15-18 hours of initial training in Medicare, Medicare Supplement, long-term care and other health insurance products available to seniors. Volunteers are then available through the sponsoring organization to meet with individual seniors regarding Medicare or health insurance issues, questions or problems.

The commissioner also oversees the management of the State Fire and Tornado Fund, the State Bonding Fund, the State Petroleum Tank Release Compensation Fund (Tank Fund) and the State Boiler Inspection program.

The Fire and Tornado Fund provides very broad, low-cost property insurance coverage for buildings and contents owned by the state, political subdivisions and school districts.

The Bonding Fund provides blanket fidelity bond coverage for the state, political subdivisions and school districts for employee theft of money and property.

The Tank Fund reimburses above-ground and underground petroleum storage tank owners for cleanup and third party liability expenses incurred because of petroleum contamination.

The Boiler Inspection Program is a loss control program which requires all boilers in the state to be inspected on a periodic basis.

The Unsatisfied Judgment Fund is also administered by the Insurance Commissioner. The Fund was established by the 1947 Legislative Assembly to protect residents of North Dakota against financial hardships caused by accidents with judgment-proof drivers. The fund allows a resident, with a state court judgment for damages from bodily injury or death in a motor vehicle accident, to obtain a financial settlement from the fund.

Boards and Commissions

MEMBER: State Investment Board, State Commission on Medical Competency.

STATE TAX COMMISSIONER

Qualifications for Office:

25 years of age
Qualified Elector
Four-year term

Robert Hanson

STATE TAX COMMISSIONER

Introduction

The Tax Department is comprised of six separate divisions.

The Commissioner's Division has ultimate responsibility for the general administration of the department. It also serves as the department's primary research and statistics analysis center, coordinates department data processing needs, manages the personnel functions and directs internal audits of the department.

The Legal Division provides legal advice and counsel to the department and to the State Board of Equalization. The Controller's Division performs accounting functions, provides staff services and collects delinquent taxes. The Sales and Special Taxes Division, Income and Oil Taxes Division and Property Tax Division administer different state taxes under the direction of the Tax Commissioner.

The Tax Department administers the tax laws of the state to ensure collection of tax revenue necessary to fund the operation of state and local government. The Tax Department receives and processes tax returns; disseminates information to foster compliance; issues rules and regulations, guidelines, and instructional materials; holds tax seminars and public meetings; and assists taxpayers through personal contact, telephone, and correspondence. In addition, the Tax Department collects delinquent taxes; assists local government units in administering the property tax; administers the Homestead Credit and Renter Refund Program; prepares fiscal notes; provides input and analyses for revenue forecasts; conducts formal hearings; prepares opinions on tax questions; and provides advice and counsel to the State Board of Equalization.

Major Functions

The primary mission of the Tax Department is to collect tax revenue required to be paid by law and necessary to fund the operation of state and local government, through the uniform and fair administration of North Dakota's tax laws. Accomplishment of this mandate requires the pursuit and achievement of several distinct goals simultaneously.

The first goal, essential to effective tax administration, is to obtain voluntary compliance with the tax laws of the state by all taxpayers. Disseminating information about specific tax laws and general tax structure serves to foster compliance; well-informed citizens generally are willing to meet their obligations. The Tax Department issues rules and regulations, guidelines and instructional booklets. In addition, public meetings are held, and taxpayers receive individual assistance through personal contact, the telephone and correspondence.

A second goal is to enforce compliance by those who refuse to voluntarily submit tax returns and remit taxes due. Compliance activities are carried out by department auditors, compliance officers, field tax inspectors and tax collection officers, under the procedures set out in Title 57 of the North Dakota Century Code.

Recognizing that the quality of service an agency provides reflects the competence of its personnel, the third goal of the Tax Department is to employ highly qualified, capable men and women and to afford them opportunities for personal and professional growth within the organization.

The fourth goal is effective management of human resources. Within the framework of the Tax Department's broad objectives, individuals are encouraged to apply creativity and initiative in the performance of their responsibilities. In this environment, employees strive to attain self-determined objectives, which results in greater productivity and contributes to organizational achievement.

As a fifth goal, the Tax Department is committed to fiscal responsibility in the use of funds provided by the Legislature. In its efforts to minimize costs while maximizing productivity and quality of taxpayer service, the Tax Department relies on a management system which emphasizes the necessity of realistic measurement of achievements and current reports of problems and progress in meeting the Department's objectives.

Boards and Commissions

Represents North Dakota on the multistate tax commission, State Board of Equalization.

LABOR COMMISSIONER

Qualifications for Office:

25 Years of Age
Qualified Elector
Four-year Term
No-Party Ballot
Election Held During Off-Presidential Election Year

Craig Hagen

LABOR COMMISSIONER

Introduction

The North Dakota Labor Department and its functions are provided for in Title 34 of the North Dakota Century Code.

Voters in the 1960 Primary Election approved the Constitutional Amendment authorizing the legislature to establish a Department of Labor. In 1965, the legislature created the current Labor Department arrangement. Previously it had been a part of the Agricultural Department.

The North Dakota Department of Labor is directed by a Commissioner who is elected on the No-Party Ballot for a four-year term.

Major Functions

North Dakota's work force consists of about 320,000 people employed by approximately 20,000 businesses. It is the duty of the Commissioner of Labor to try to improve the working and living conditions of the work force and to advance their opportunities for profitable employment.

Additional duties include: to foster, promote, and develop the welfare of both earners and industries in North Dakota; the promotion of friendly and cooperative relations between employers and employees; cooperating with other state agencies to encourage the development of new industries and the expansion of existing industries; representing the State of North Dakota in dealings with the United States Department of Labor, the Federal Mediation and Conciliation Service, and the United States Veterans Administration with respect to job training programs; acquiring and disseminating information on the subjects connected with labor, relations between employers and employees, hours of labor, and working conditions; encouraging and assisting in the adoption of practical methods of vocational training, retraining, and vocational guidance.

Further duties consist of administering and enforcing the laws governing: minimum wages; child labor; labor-management relations; wage payment and wage collection; equal pay for equal work; employment agencies; and discrimination in employment. Distribution of printed material and personal contact encourages compliance by the approximately 20,000 employers in North Dakota.

Minimum wage levels and work condition provisions are determined by the commissioner acting on the recommendations of conference committees selected by the commissioner. Public hearings must be held before a new minimum wage or work condition provision is enacted.

Wage payment and collection assistance is available to employees. A claim for unpaid wages is investigated to determine its merit. The commissioner may pursue collection of legitimate claims. Claims range from one hundred dollars to several thousand dollars and collections have been running over a hundred thousand dollars per year.

Child labor regulation is addressed through a work permit system. Fourteen and fifteen year old students may have an opportunity to work by obtaining a permit. Fourteen and fifteen-year-olds are protected from hazardous work, hours of work in excess of state law, or from working hours that are illegal. The permit is available from school superintendents, local job services, and the Department of Labor. Each permit is reviewed by the North Dakota Labor Department.

Administration and enforcement of the Equal Employment Opportunity provisions require action addressing the wrongs and eliminating the existence of discrimination in employment. The United States Equal Employment Opportunity Commission contracts with the North Dakota Department of Labor to participate in receiving and investigating charges.

The "employment at will" doctrine prevails in North Dakota and generally means that the employer can arrange the work schedule, decide the salary, and demand the level of production and performance as long as the laws of minimum wage, child labor, overtime, discrimination, and other applicable provisions are not violated.

Under the Labor Management Relation Act, the commissioner may conduct a representation election if a minimum of 30 percent of the employees working for the same employer request that an election be conducted to determine if a particular bargaining representative will be the choice of a majority of the voting employees. If a labor-management dispute arises, the commissioner may act as a mediator or may appoint an impartial and disinterested person to act as a mediator when asked to do so by one or both parties involved in the dispute for the purpose of bringing the parties together and to reach a settlement.

Boards and Commissions

The commissioner currently serves as an ex-officio member of the Governor's Employment and Training Forum; as a member of the Executive Committee of the National Association of Governmental Officials; and as a member of North Dakota's Rural Developmental Council.

SUPERINTENDENT OF PUBLIC INSTRUCTION

Qualifications for Office:

25 years of age
Qualified Elector
Four-year term
No-Party Ballot
Must hold a Teachers Certificate of the highest grade issued in the state

Dr. Wayne G. Sanstead

SUPERINTENDENT OF PUBLIC INSTRUCTION

Introduction

The Superintendent of Public Instruction is charged with the general supervision of the elementary and secondary schools of the State of North Dakota. He serves on a number of boards and commissions as part of that responsibility. In July of 1989, the administration of the Division of Independent Study was transferred to the Superintendent. Effective January of 1991, the Superintendent became responsible for the supervision of the state Schools for the Deaf and Blind, and the State Library.

Major Functions

Approval and Accreditation.

All private schools must receive approval by both the superintendent of public instruction and the appropriate county superintendent. There are four approval stipulations: length of school term; minimum curriculum; teacher certification; and, health, fire, and safety codes. The approval stipulations are also applied to all of the public schools. Additionally, schools may seek accredited status by documenting that a number of input and process standards have been met. Certain schools are commended which have successfully completed a school improvement process which includes a self-study, a team visit, and implementation of a school improvement plan.

Teachers' Professional Practices Commission.

The commission is made up of nine members appointed by the Governor. The superintendent is executive secretary of the commission. The commission develops standards relating to ethics, conduct and professional performance of persons engaged in teaching in the public schools. These standards are recommended to the superintendent for adoption and the superintendent may approve or revise and promulgate such standards.

The commission is also charged with investigating complaints against teachers. The commission may discuss the complaint, issue a written warning or file a complaint with the superintendent. In the latter case, the superintendent may conduct a hearing. If the superintendent finds grounds for revocation or suspension, such an order would be issued as provided by state law.

The commission also recommends inservice programs and plans to the state superintendent.

Education Fact Finding Commission.

This commission consists of three members, one each appointed by the Governor, the Attorney General and the Superintendent. The appointee of the superintendent serves as chairman of the commission.

If a school board and its teachers reach an impasse in negotiation of the terms and conditions of employment, assistance may be requested from the commission. The commission considers the facts and makes a recommendation. Neither party is required to accept the recommendation.

Supervision of Adult Basic and Secondary Education Programs.

The superintendent is responsible for coordinating all adult basic and secondary education programs, including the administration of state and federal funding for such programs. State and federal grants are provided to adult learning centers.

Federal Agreements.

The superintendent may enter into agreements with any agency of the federal government for or on behalf of the public school districts of North Dakota and may adopt necessary rules of administration to ensure proper and efficient operation of such agreements and to comply with such conditions necessary for the state to receive full benefits of federal programs. All contracts, agreements or arrangements affecting public tax-supported schools shall be entered into in accordance with regulations prescribed by the superintendent.

Agreements have been negotiated to address compensatory and migrant education, exemplary curriculum development, health education, national origin, race, and sex equity. The National Endowment for the Humanities and various private foundations have been contributors to special programs via the Department.

Certification of Teachers.

The superintendent, after consulting with the Teachers' Professional Practices Commission, determines the criteria for teacher certification. The standards include, by law, a consideration of character, educational preparation and general fitness to teach in North Dakota schools.

The superintendent adopts rules and regulations for the issuance of certificates. The superintendent may revoke or suspend a teacher's certificate for intemperance, immorality, cruelty, incompetency, for commission of a crime, neglect or refusal to perform duties, for breach of contract, for violations of professional codes or standards as promulgated in law or for any cause that would have prevented the certificate from being issued in the first place had the facts been known.

Curriculum.

The department sustains assessment and curriculum development both as a means to determine effectiveness of programs and as an avenue to provide technical assistance. Statewide administration of an achievement series and aptitude tests provide information on how well students are performing as compared to how well they ought to perform. Various projects are funded which lead to curriculum guidelines and sample curricula.

Curriculum Frameworks with performance standards have been developed which provide guidance to local school systems. These resources are used by schools and districts to develop subject matter curricula, course content, and more specific assessments.

School Accounting.

The superintendent is required by law to implement a uniform system of accounting, budgeting and reporting for all school districts. All districts are required to submit additional reports as required by the superintendent.

Biennial Report.

The superintendent must prepare a biennial report that shows the number of districts, students, attendance records and studies offered. The report shall also illustrate the financial condition of the schools, receipts and expenditures, value of schoolhouses, costs of tuition and teachers' salaries.

In addition, the report should include the condition of private schools and other recommendations which the superintendent deems important.

Assessment.

Through various task forces, assessment procedures, and evaluation processes, the statewide education system is analyzed. The mission statement is periodically revised with accompanying revisions in the overall goals and objectives being made. Determinations of needed improvements are defined and plans for addressing deficiencies are promulgated. Constant attention is given to the status of the system from the perspectives of efficiency, effectiveness, and equity.

Supervision of County Superintendents.

The county superintendents are to follow all lawful instruction from the state superintendent and are to distribute necessary forms provided by the state superintendent. In case of controversy, the county superintendent will provide a full written statement to the state superintendent for a final binding decision. Each county superintendent must furnish an annual report to the state superintendent.

School Buildings.

No construction or renovation of any building to be used in whole or in part as a school facility shall be commenced until construction approval has been given by the Superintendent of Public Instruction. If the estimated costs exceed $25,000, a school district may proceed to develop architectural plans for any approved construction or renovation. These plans must include details of ventilation, heating, lighting, fire protection systems and accessibility for the disabled. Complete final drafts of these architectural plans must be submitted to the state superintendent for approval before construction begins. The minimum building requirements for North Dakota school facilities are listed in the Uniform Commercial Code, 1988 edition.

The state board of public school education, acting through the office of the state superintendent, shall have jurisdiction over the school construction fund.

School District Aid.

The superintendent certifies to the Office of Management and Budget a list of all districts and the amounts due each school district and each school district shall be paid, within the limits of legislative appropriation.

Transportation Aid.

The superintendent requires by law, certification as to the compliance with state law of school buses and their drivers before payments are made. The superintendent shall determine the total amount of payments. The superintendent shall make such rules and regulations as necessary to gather information and evidence required for payment of transportation funds. The superintendent also must audit a minimum of ten transportation accounts annually.

Tuition Agreements.

The superintendent enters into reciprocal master agreements with appropriate agencies of bordering states to provide for payment on a per pupil basis for students attending schools in bordering states.

Textbooks.

Any firm, person or corporation before offering for selection any school textbook is required to 1) file the book with the superintendent with a price list, 2) file with the superintendent a surety bond of not less than $2,000. The superintendent shall provide a listing of textbooks and prices.

State Tuition Fund.

The Office of Management and Budget notifies the superintendent of the amount in the fund and the superintendent then apportions such funds among the state's school districts in proportion to the number of children of school age in each district.

School Lunch.

The superintendent shall establish a school lunch fund. All funds received from all sources for the purpose of providing school lunch must be placed in that fund.

The superintendent may enter into agreements with federal agencies and school boards to provide for a school lunch program. The superintendent shall prescribe rules for keeping accounts, records and making reports. He shall also cause to be conducted such audits, inspections and reviews as may be necessary to determine whether agreements and regulations are being complied with and to ensure effective administration.

Special Education.

The superintendent shall establish general state policy and shall endeavor to ensure cooperative special education programs coordinating all available services. Rules and regulations shall be prescribed for the provision of services and administration of those services. The superintendent shall assist districts in the inauguration, administration and development of programs and for the certification of schools, teachers, facilities and equipment and may apply for, administer, receive and expend federal aid for which the state may be eligible.

The superintendent shall cooperatively develop and implement an interagency agreement with appropriate private or public organizations.

The superintendent shall enforce educational standards for all special education programs wholly or partly supported by the state which are not supervised by public school authorities.

The superintendent must approve all contracts for handicapped children to attend private or out-of-state public schools.

The Educational Telecommunication Council.

The superintendent's representative serves as a member of this board which owns the state's public broadcasting facilities and is charged with planning and implementing a statewide telecommunications syste

Board of Higher Education Nominating Committee.

The superintendent is chairman of the Board of Higher Education Nominating Committee. This committee also includes the chief justice of the State Supreme Court and the President of the NDEA. The committee provides three nominees to the Governor for selection as members of the Board of Higher Education.

Drug Free Schools.

The superintendent shall implement a program of chemical abuse prevention in the schools of North Dakota. The superintendent will develop guidelines for such programs which will include: 1) community involvement, 2) assessment of services, 3) assessment of student needs, 4) coordination of activities with other agencies, 5) a plan for implementation, 6) evaluation plans, and 7) budget. The districts may apply to the superintendent for funding for such programs.

The superintendent shall also develop a plan for coordination with existing agencies and their programs.

Annexation and Reorganization.

The superintendent shall direct school districts annexation, reorganization and dissolution, and shall carry out the duties imposed on the State Board of Public School Education.

School District Boundary Restructuring.

The superintendent administers a program providing planning grants and supplemental payments to contiguous school districts for restructuring school district boundaries for the purpose of increasing educational opportunities of students and the sharing of administration.

Division of Independent Study - Fargo, North Dakota.

This Division operates the eighth largest public high school correspondence program in the United States and serves students from 41 states and 14 foreign countries. Required and elective courses are offered to supplement high school curricula and to provide an alternate method of earning a high school diploma. The Division is North Central Association accredited.

The Division also administers the North Dakota State Film Library, rents educational videos and 16 mm films, and acts as a video film depository on a fee-basis for other state agencies.

The North Dakota Division of Vision Services - Grand Forks, North Dakota.

The North Dakota Division of Vision Services provides a variety of services for visually impaired and multihandicapped/visually impaired school-age children. The North Dakota School for the Blind is a fully accredited educational institution serving the educational needs of visually impaired students aged 0 to 21 in North Dakota. Specific services provided by the North Dakota School for the Blind include: outreach evaluation and consultation services, center-based educational services, and the loaning of materials through the Instructional Resource Center. Through interagency agreements with the Department of Human Services and the Offices of Vocational Rehabilitation, services are also available to blind or visually impaired adults.

Examples of some of the services offered are as follows: outreach services: low vision and educational evaluations, teacher consultations, family support services and recommendations for program development; Center-based Educational Services: direct instruction in independent living, communications and vocational training, diagnostic evaluations, and recommendations for continued programming; Instruction Resource Center: large print and Braille textbooks, recorders, taped texts, electronic reading devices, and curriculum enhancements for the visually impaired.

North Dakota State Library - Bismarck, North Dakota.

The major goals of the North Dakota State Library are: to provide or coordinate the library services to those patrons with unique needs such as state government officials and employees, those without direct local library service, the blind and physically disabled, and the clientele of state-supported institutions; to assist public libraries through advice and consulting services in areas such as collection development, technical services, budgeting and finances, building and facility planning, automation, and program development and evaluation; to coordinate the sharing of resources among the state's public library collections; to improve the quality of library services by providing continuing educational opportunities for librarians and public library trustees; and to equitably distribute and administer state and federal grant funds in accordance to applicable state and federal regulations.

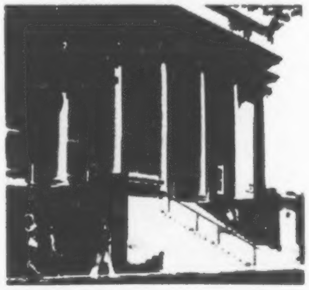
North Dakota School for the Deaf - Devils Lake, North Dakota.

The North Dakota School for the Deaf is a fully accredited educational institution serving the educational needs of hearing impaired students aged 0 to 21 in North Dakota (birth -2 through the Parent-Infant Program and 3-21 through the school program).

In addition to the school's traditional role as an educational institution, NDSD also has become a resource center on deafness, serving the needs of hearing impaired citizens statewide. Through its Outreach Program, the school has expanded consultation services, evaluation and assessment services, and off-campus educational services. Through collaborative and cooperative ventures with other agencies, the school has improved the delivery of services to hearing impaired citizens.

Boards and Commissions

The superintendent also serves as a member of the State Board of Public School Education, Vocational Education, the Board of University and School Lands, the Teachers' Fund for Retirement and the Children's Services Coordinating Committee.



COMMISSIONER OF HIGHER EDUCATION

AND

CHANCELLOR OF THE NORTH DAKOTA UNIVERSITY SYSTEM

Qualifications for Office:

Appointed to a three-year term by the State Board of Higher Education

Must be a graduate of a reputable college or university who by training and experience is familiar with problems peculiar to higher education

Dr. Douglas Treadway

STATE BOARD OF HIGHER EDUCATION

Introduction

Publicly supported colleges and universities in North Dakota are governed by the State Board of Higher Education. The board was established in the North Dakota Constitution through the passage of an initiated measure by the people of the state in 1939. This makes the board somewhat unique when compared to most state agencies. The typical state agency is responsible to either the governor or another elected official, but the board is not directly responsible to the governor. Instead, as provided for in the Constitution, the board has ". . . full authority over the institutions under its control with the right, among its other powers, to prescribe, limit, or modify the courses offered at the several institutions." The board must, however, seek state appropriations through the budget review process of the executive and legislative branches. In analyzing the college and university budget requests, both operational and capital expenditures, the board submits its recommendations to the Director of the Budget, Office of Management and Budget.

According to the constitutional requirement, the board must consist of seven members, all of whom must be qualified electors and taxpayers of the state and residents for at least five years preceding their appointment. They are appointed by the governor, with the consent of the Senate, from a list of names selected by the unanimous action of the President of the North Dakota Education Association, the Chief Justice of the Supreme Court, and the Superintendent of Public Instruction. Members of the board hold seven-year overlapping terms.

The Constitution also provides that the board shall employ an individual in the position of Commissioner of Higher Education. The commissioner is the chief executive officer of the board.

The State Board of Higher Education created the term North Dakota University System (NDUS) in 1990 to refer to the eight campuses and three branches under the Board's governance. The NDUS represents all post-secondary institutions supported by the state. In taking this action, the board added the title Chancellor of the North Dakota University System to the title of the Commissioner of Higher Education. The term commissioner refers to the incumbent's role as chief executive officer of the board; the term chancellor refers to the incumbent's role as chief executive officer of the campuses. The presidents of the eight campuses report to the chancellor, who reports to the board. The purposes of these changes are to promote cooperation among North Dakota's campuses, to enhance their collective efficiency and effectiveness, and to promote accountability to the people of the state.

The board has jurisdiction over all matters for the campuses, including new programs of instruction, research, and public service; the establishment of a college, school, division, or other unit; and plans for all capital improvement of facilities. The board also governs the Upper Great Plains Transportation Institute, the Agricultural Experiment Station, the Land Reclamation Research Center, the State Toxicologist, the State Forest Service, the Rehabilitation Hospital, the Cooperative Extension Service, and the Northern Crops Institute.

The chancellor's office administers a variety of financial aid programs and reciprocal agreements with post-secondary institutions in other states.

University of North Dakota.

The University of North Dakota is located in Grand Forks, a city of approximately 44,000 located in the center of the Red River Valley. Approximately 12,000 students are enrolled in some 130 fields in 13 major academic units--University College (the freshman division); Colleges of Arts and Sciences, Business and Public Administration, Fine Arts, Human Resources Development and Nursing; Schools of Engineering and Mines; Law, Medicine, and the Graduate School; the Center for Aerospace Sciences and Center for Teaching and Learning; and the Division of Continuing Education.

North Dakota State University.

Located in Fargo in the Red River Valley, North Dakota State University is a public university with programs that reflect its land-grant heritage in agriculture and the sciences, with programs in the arts, humanities, and social sciences. Nearly 10,000 students are enrolled in the Colleges of Agriculture, Business Administration, Engineering and Architecture Home Economics, Humanities and Social Sciences, Science and Mathematics, Pharmacy, and University Studies; the School of Education; and the Graduate School.

Minot State University.

Located in north central North Dakota, Minot State University's baccalaureate mission uniquely allies liberal arts and professional-preparation curricula in a comprehensive range of programs, each based on a strong general education component emphasizing the liberal arts and sciences. At the masters level, Minot's growing state-wide graduate mission is focused in education and human services. Minot State supports the primacy of its teaching mission with a commitment to generating and sharing new knowledge, particularly as such knowledge is focused toward two complementary ends: quality instruction in the classroom and quality of life for North Dakotans.

Dickinson State University.

Dickinson State University is located in southwestern North Dakota. It offers two- and four-year program Its mission includes preparing professional leadership for elementary and secondary education. Present programs include the liberal arts, and specialized programs in business, health services, agriculture, and computer science.

Mayville State University.

Mayville State University is located in east central North Dakota in the heart of the Red River Valley. Teacher preparation is the core of Mayville State University's mission, but the curriculum also encompasses other academic areas. A significant number of students graduate in business administration. The faculty offers baccalaureate and associate of arts degrees.

Valley City State University.

Valley City State University is located 60 miles west of Fargo. The State Board of Higher Education gave Valley City State University a mandate for the superior small-college preparation of teachers and of small-business personnel for its region. In the same action

Valley City State was asked to play a state-wide role in rural education, especially in the use of instructional technology. In addition to its curricula in Education and Business, Valley City State provides a basic curriculum in the liberal arts and sciences and pre-professional studies.

Bismarck State College.

Bismarck State College has enjoyed constant growth and continuous accolades for its innovative programs and practices. Bismarck State has a three-fold mission: 1) to provide academic transfer courses and programs which parallel those offered during the first two years at baccalaureate granting institutions, 2) to provide vocational and technical programs designed to prepare the learner for an immediate career in a special occupation, 3) to provide service to the community and the state of North Dakota in the form of cultural, educational, occupational, and vocational programs, courses, workshops, seminars, and institutions.

North Dakota State College of Science.

North Dakota State College of Science is located in Wahpeton, approximately 60 miles south of Fargo. The Trades and Technical Divisions were organized in 1922 and since that time the college has played a leading role in promoting vocational and technical education. North Dakota State College of Science plays an important role in industrial and business development since it offers courses and programs for such business needs. Special training courses or programs can be offered to meet community or state development requests. The major curriculum divisions are Arts and Science, Business, Technical, and Trades.

North Dakota State University-Bottineau.

North Dakota State University-Bottineau is located close to the International Peace Gardens and the Turtle Mountains in north central North Dakota. In addition to programs in agriculture, forestry, and horticulture, it also offers comprehensive junior college curricula. It provides specialized, technical programs in agriculture, environmental/natural resource studies, and business as well as traditional transfer courses.

University of North Dakota-Lake Region.

The University of North Dakota-Lake Region is located in Devils Lake in northeastern North Dakota. It has a fifty year history of providing both vocational and academic programs for post-secondary students. The college is committed to: 1) academic transfer courses and programs, 2) vocational-technical courses and programs, and 3) continuing and life-long education.

University of North Dakota-Williston.

The University of North Dakota-Williston is a two-year college that provides general pre-professional education, vocational technical education, and community services to northwestern North Dakota. Through interactive television, UND-Grand Forks offers baccalaureate programs in medical technology, nursing, and social work at UND-Williston.

Agricultural Experiment Station.

The Agricultural Experiment Station of North Dakota State University acquires and provides information on agricultural subjects through an integrated and coordinated research program. The program is conducted in cooperation with the federal research, science and education administration of the U. S. Department of Agriculture and other state experiment stations.

Cooperative Extension Division.

As one of the educational divisions of North Dakota State University, the Cooperative Extension Division provides informal out-of-school education programs for North Dakotans involved in agriculture, 4-H, home economics, community development, and other related areas. Through the interpretation of the research findings of NDSU, the U.S. Department of Agriculture, and other reliable research sources, the Cooperative Extension Division prepares and presents practical and useful information that will help the people of North Dakota solve their farm, home and community problems.

State Forester.

The state forester works towards the prevention and suppression of forest fires; maintains a state nursery; distributes seeds and planting stock from the state nursery; assists in educating North Dakotans on seed and planting stock; and acquires and manages state forest land.

Northern Crops Institute.

The purpose of the Northern Crops Institute is to provide technical and marketing assistance through training courses and technical services in order to facilitate the domestic and market development of northern grown crops, and expand the sale of them.

Office of the State Toxicologist.

The Office of the State Toxicologist is maintained in conjunction with the College of Pharmacy at North Dakota State University. Major responsibilities include assisting coroners in death investigations, and assisting physicians in determining the drug levels of patients. The state toxicologist trains law enforcement officers in the use of breath alcohol testing instruments and in the analysis of blood samples for alcohol content determinations. The state toxicologist also examines the blood samples from persons fatally injured in automobile accidents.

Upper Great Plains Transportation Institute.

With its programs administered by the North Dakota State University, the Upper Great Plains Transportation Institute conducts and supervises transportation research in the area of economics, engineering, law and planning in an effort to increase the knowledge and understanding of marketing factors associated with the geographic location of North Dakota and the upper great plains.

BOARDS AND COMMISSIONS

There are approximately 130 boards, commissions and committees in state government with varying degrees of responsibility and accountability. The following pages represent a partial listing of state government boards and commissions. They are provided to further demonstrate the decentralization of government, the division of powers within the executive branch, and to offer diverse samples of entities with major responsibilities and governing authority--some of which are unique to North Dakota government, i.e., the Bank of North Dakota and the North Dakota State Mill and Elevator Association.

The information contained in this section was developed from the "Structure of North Dakota Government," a publication of the University of North Dakota's Bureau of Governmental Affairs, and the North Dakota Century Code.

Commissions

Emergency Commission.

Created by

North Dakota Century Code, Chapter 54-16.

Composition

The Emergency Commission consists of the Governor as chairman, the Secretary of State as secretary, and the Commissioner of Agriculture. Whenever during the biennium an allocation to any state institution or department out of the state contingency fund exceeds $10,000, the chairpersons of the house and senate appropriations' committees (or their vice-chairpersons) become commission members.

Major Duties

The Emergency Commission has the authority to transfer money between funds or line items, or to order funds drawn from the state contingency fund in the state treasury when, in its judgment, an emergency situation exists in any board, commission, department, or agency of state government. The total of transfers from the contingency fund may not exceed five hundred thousand dollars, except in the amount authorized for transfer by the budget section of the Legislative Council. The commission is also empowered to authorize the receipt of federal monies which become available between sessions for new programs. No state agency may otherwise expend federal funds which have not been specifically appropriated by the legislative assembly.

Industrial Commission.

Created by

North Dakota Century Code, Chapter 54-17.

Composition

The Industrial Commission consists of the Governor as chairman, the Attorney General, and the Commissioner of Agriculture. Orders of the commission become effective upon approval by a majority of its members.

Major Duties

The commission determines the location of, and makes rules, regulations, orders, and bylaws for the management and operation of, all utilities, industries, enterprises, and business projects owned, administered, and operated by the state. The Bank of North Dakota and the State Mill and Elevator fall under this jurisdiction. Those activities operated in penal, charitable, and educational institutions are excluded from commission control.

The commission develops regulations for the conservation of North Dakota's oil and gas resources and subsurface minerals, and for coal exploration. The enforcement of the state's oil and gas conservation laws is a responsibility of the commission's regulatory division. The commission develops regulations for the storage and disposal of nuclear and other wastes in the state.

The commission regulates and issues bonds for the low income home mortgage finance program, through which the commission purchases low-interest mortgage loans made to low-income families from approved lenders.

The 1981 Legislative Assembly granted the commission the authority to issue bonds and lend the revenue from the sale of such bonds to approved lenders in order to make available funds for the establishment and rehabilitation of agricultural enterprises.

Industrial Commission--Bank of North Dakota.

Created by

North Dakota Century Code, Chapter 6-09.

Composition

The Bank of North Dakota is operated, managed, and controlled by the Industrial Commission. Appointed and supervised by the commission, the Bank president hires such staff as dictated by the best interests of the financial institution. The Governor appoints a seven-member advisory board of directors, at least three of whom must have specified experience in banking.

Major Duties

The bank was established to encourage and promote agriculture, commerce, and industry in the state; to provide the most efficient and economical financial service to the state, its agencies and instrumentalities; and to furnish professional assistance whenever possible for the well being and advancement of North Dakota and its citizens.

Through the only legal depository of all state funds, the bank may accept deposits from other sources. It serves as a central clearing agency for many North Dakota banks and other financial institutions. As the state's fiscal agent, the bank is authorized to make direct insured loans such as federally insured student loans, federal housing administration and veterans' administration home loans. It may participate with other financial institutions in loans made by them, may make loans to political subdivisions, and to actual farmers who are state residents.

Industrial Commission--State Mill and Elevator.

Created by

North Dakota Constitution, Article X, Sections 19 and 20. North Dakota Century Code, Chapter 54-18.

Composition

The State Industrial Commission manages and controls the Mill and Elevator Association. To assist in the operation of the mill and elevator, the commission appoints a manager. The manager, subject to commission regulation, may employ such personnel as deemed necessary.

Major Duties

The Mill and Elevator Association was established for the purpose of encouraging and promoting agriculture, commerce, and industry by engaging in the business of manufacturing and marketing farm products.

Water Commission, State.

Created by

North Dakota Century Code, Chapter 61-02.

Composition

With the governor as chairman, the commission consists of the commissioner of agriculture and seven other members appointed for six-year terms by the governor. The commission appoints the state engineer to serve as secretary and chief engineer. To meet its responsibilities the commission may employ such other staff as required.

Major Duties

The objectives of the commission are water conservation and development and flood control. To reach these goals, the commission has authority to investigate, plan, regulate, construct, and maintain all works, dams, public and private projects which in its judgment may be necessary or advisable. The commission also cooperates with federal agencies in making water facility projects available to the public; inventories both surface and ground water, and prepares and maintains a statewide master plan for future water resources development. The state engineer issues water permits under water law administration.

Water Conservation Commission–Atmospheric Resource Board.

(Previously the Weather Modification Board)

Created by

North Dakota Century Code, section 61-04.1-04

Composition

As a division of the state water commission and under its direct supervision, the board includes the state aeronautics commission director, a representative from the health department's environmental control services division, the state engineer, and seven additional members. Appointed for four-year terms by the governor from recommendation lists made by weather modification authorities in each district, each of the seven comes from one of the state's weather modification districts. The board employs an executive director.

Major Duties

The board establishes qualifications and procedures for issuing, revoking, and suspending weather modification licenses and permits. It also develops regulation, monitoring, and evaluation standards for weather modification operations. As authorized by law, the board may contract for weather modification with counties, the federal government, or any person, association, partnership, or corporation. The board is empowered to order the cessation of any weather modification operation in violation of law or regulation, which order is enforceable in a court of law.

The board is required to formulate a program of weather modification research and development in North Dakota, and to present a biennial report to the governor, describing the research and development activities conducted during the biennium, the board's supervision and control of them, and the outcome.

Boards

Historical Society.

Composition

The state historical board consists of nine members appointed by the governor for 3-year terms and seven ex-officio members: the secretary of state, state engineer, director of department of transportation, state forester, game and fish commissioner, director of state library and state treasurer. The board appoints the superintendent. The society preserves and interprets historical materials, sites, and artifacts. It administers over 50 historic areas throughout the state and operating the Heritage Center and several branch museums around the state. It also maintains a library reference collection of manuscripts, books, newspapers, maps, photographs and other documents.

Board of Higher Education.

Composition

When the people voted to amend the North Dakota Constitution in 1938, they wanted to insulate the institutions of higher education from politics. The amendment created the board of higher education, consisting of seven members. The governor appoints the members from lists of nominees made up by the president of the North Dakota Education Association, the chief justice of the supreme court, and the superintendent of public instruction. The governor's appointments are then confirmed by the senate. A member of the college faculties and a student sit with the board as non-voting participants. The board has control of all public institutions of higher learning.

State Board of Public School Education.

Created by

North Dakota Century Code, Section 15-21-17.

Composition

The board consists of the Superintendent of Public Instruction as executive director and secretary and of one qualified elector from each of six districts in the state. The six members are appointed by the Governor and subject to senate confirmation for staggered six-year terms, from a list of three nominees for each position to be filled. This list is submitted by a committee consisting of the president of the North Dakota State's Attorneys Association, the president of the North Dakota School Administrator's Association, and the president of the North Dakota School Board's Association. At all times, two members of the board must be members of the North Dakota School Board's Association.

Major Duties

The board acts as the governing agent for the Vocational Education Division and approves curriculum for the Division of Independent Study. The board has final approval or disapproval of school consolidation, school construction loans, and high school tuition appeals.

State Board for Vocational and Technical Education.

Created by

North Dakota Century Code, Section 15-20.1-02.

Composition

The State Board of Public School Education serves as the State Board for Vocational Education. Acting through the Superintendent of Public Instruction, the board appoints a director and executive officer for vocational education and designates other assistants as needed. The director, under the supervision of the board and the superintendent, is charged with the administration of the provisions of the law concerning vocational education.

Major Duties

Areas of vocational education include agricultural, industrial, trade, home economics, distributive, and office occupations. In administering vocational and technical education programs, the board provides services to persons attending high school; having completed or left high school who are available for full-time study in preparation for entering the labor market; needing training or re-training to achieve stability or advancement in employment; and having academic, socio-economic, or other handicaps preventing them from succeeding in the regular vocational education process.

The board administers funds for the promotion of vocational administration provided by the federal government, makes studies and investigations relating to vocational education, and formulates plans for the place of vocational education in the state's public education system.

After determining that state requirements are met, the director and executive officer of the State Board for Vocational and Technical Education licenses all private trade, industrial, vocational, technical, business, or correspondence schools in North Dakota (NDCC, Section 15-20.2).

State Board of University and School Lands.

Created by

North Dakota Constitution, Article IX, Section 3. North Dakota Century Code, Chapters 15-01 and 15-02.

Composition

The Board of University and School Lands consists of the Governor, the Secretary of State, the State Treasurer, the Attorney General, and the Superintendent of Public Instruction. The board appoints for a two-year term a commissioner of University and School Lands to serve as chief administrative and executive officer of the State Land Department. The commissioner appoints a deputy commissioner with board consent.

State Board of University and School Lands--Land Department.

Major Duties

As the board's administrative agency, the Land Department has general authority, direction, and control over the care, management, and disposition of all common school and institutional grant lands and the funds resulting from their lease, sale, and disposition. The board also has general supervisory authority ove leasing of minerals on state-owned lands and manage certain acquired lands and sovereign lands (the beds of navigable waters).

In managing the agency's permanent trust funds, the Land Department purchases first mortgage farm loans through the Bank of North Dakota, invests in securities guaranteed by the federal government, and makes other investments authorized by law.

Abandoned Property Office (NDCC, Chapter 47-30)

The board also manages all property that comes to the state by escheat either through estate proceedings or in accordance with the North Dakota disposition of abandoned and unclaimed property act.

State Board of University and School Lands--Energy Development Impact Office.

Created by

North Dakota Century Code, Section 57-62-04.

Composition

The Energy Development Impact Office is headed by a director appointed by the Board of University and School Lands. The director hires other staff as necessary.

Major Duties

After studying the resultant impact of coal development and oil and gas development of the state and its political subdivisions, the office reports and makes recommendations to the Governor and the Legislature. In addition, the office provides financial assistance through grants for services and facilities to those counties, cities, school districts, and other political subdivisions directly affected by coal development or oil and gas development. The office prepares forms and stipulates procedures to be used by grant applicants. In determining the amount of an individual grant, the office considers revenue expended by the political subdivision from taxes on the real property of coal development plants and from other tax or fund distribution formulas established by law. The office also makes recommendations to the Board of University and School Lands for loans from the coal development trust fund.

State Board of Equalization.

Created by

North Dakota Century Code, Chapter 57-13.

Composition

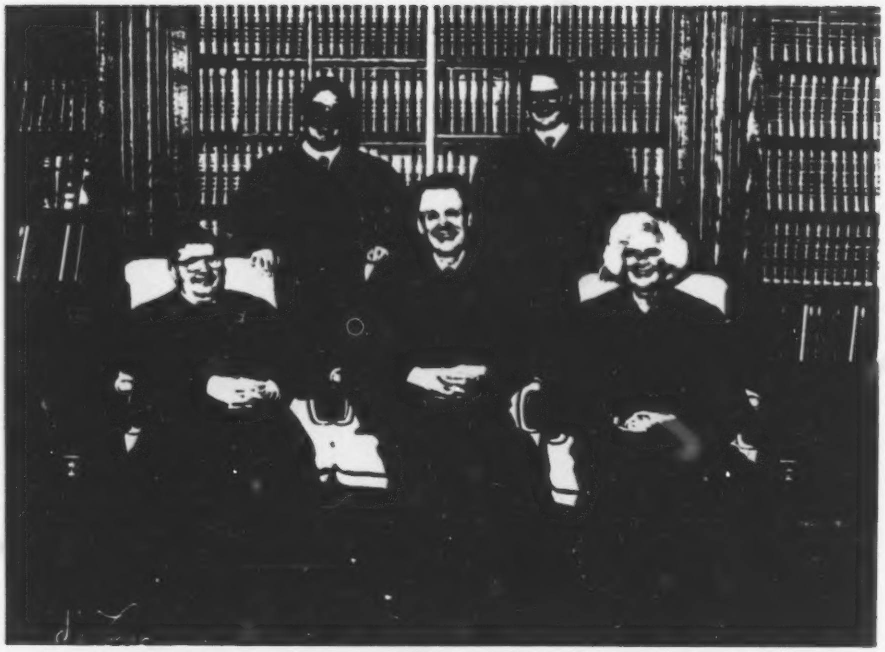
Board membership consists of the Governor as chairman, the Tax Commissioner as secretary, the State Auditor, the State Treasurer, and the Commissioner of Agriculture.

Major Duties

The State Board of Equalization is responsible for equalizing the valuation and assessment of property so that all assessments of similar taxable property are uniform and equal across the state. For tax purposes, the board determines the assessed valuation of operating properties of public utilities such as airlines, railroads, and telephone, power, and pipeline companies. The board also hears requests by new businesses for maximum five year property and/or income tax exemptions.

JUDICIAL BRANCH

OF



Left to Right (Standing) Justice William Neumann, and Justice Dale Sandstrom; (Seated) Justice Herbert Meschke, Chief Justice Gerald VandeWalle, and Justice Beryl Levine

NORTH DAKOTA

GOVERNMENT

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PREFACE TO THE CRIMINAL JUSTICE SYSTEM

The American criminal justice system at the federal, state, and local levels is a network of many institutions and individual actors working together. The goal of the system is to provide guidelines for life in a complex society that allow individuals their liberty and freedom to act for themselves, yet still provides for community safety and comfort.

The United States of America is based upon a republican form of government; state governments and the federal government are each responsible for regulating the activity of its own citizens. The Tenth Amendment to the United States Constitution reserves certain powers to the states. These police powers interpreted in conjunction with several other provisions of the Constitution (Article I. Section 8; Article I, Section 9) give the primary responsibility for making and enforcing criminal laws to the individual states. Thus, each state is responsible in determining what acts will be considered crimes, as well as the penalties set for committing those crimes. The federal government deals with criminal law in a much more restricted level, generally only in cases where more than one state is involved (for instance, kidnapping when the victim is transported from one state to another) or in an area of power that the Constitution expressly grants the federal government, such as when immigration or treason is involved.

The import of all this is that some 52 separate criminal justice systems co-exist in the United States--one in each of the 50 states, the District of Columbia, and the federal justice system. Each of these systems is unique, but the institutions involved in each system are generally the same. These institutions interact with each other to make, enforce, interpret, and execute the laws in the criminal justice system.

CIVIL LAW VS. CRIMINAL LAW

CIVIL LAW

Civil law is the area of law which deals with private lives of people in contracts and wrongs involving other people and with conflicts arising over those rights. The individual takes legal action.

PLAINTIFF	VS.	DEFENDANT
(persons corporations)		(persons/corporations)
Taking Legal Action		Against Whom Action Is Taken

Civil Procedures

Complaint Filed - Papers filed by plaintiff claiming a civil wrong done by defendant to plaintiff.

Answers - Papers filed by defendant which state defenses, deny plaintiff's case, admit charges with reason.

Pretrial Proceedings - Motions filed in court requesting discovery.

Trial - Presentation of evidence by plaintiff first, and defendant second.

Decision - Finding by judge or verdict by jury.

Judgment - Pronounced by judge in favor of plaintiff or defendant based upon decision.

Enforcement of Judgment - Court forces person against whom judgment was pronounced to pay, to do something, or to stop doing something.

Appeal - Right to appeal to correct any error of trial judge.

Contracts

A contract is an agreement between two or more persons to exchange something of value. In a contract, each person is legally bound to do what is promised. If one party does not carry out the promise, the other party can go to court for help.

[illegible] order to have a legally binding contract, certain elements must be present. There must be an offer by one party and an acceptance by the other. In addition, the two parties must agree exactly to the terms of the contract. This is called mutual agreement.

In every valid contract there must be an exchange of consideration, which means something of value is given for something else of value. For example, if you buy a book in a store, your consideration is the money you agree to pay and the bookstore owner's consideration is the book you are purchasing.

A contract may generally be either written or oral. However, to be enforceable in court, certain contracts must be in writing. These contracts include the sale of land or real estate, the sale of goods priced at $500 or more, agreements to pay another person's debt and agreements that cannot be performed within a year from the date of the agreement. The law favors written contracts, so for the protection of both parties, a written contract is better.

Persons entering into a contract must be legally competent to make contracts. For example, they cannot be mentally ill. Also, contracts to do something illegal or against public policy are not enforceable in court.

Minors may make contracts; however, as a general rule they cannot be forced to carry out the promises made and may cancel or refuse to honor the contract. Minors who cancel contracts usually must return any goods or consideration still in their possession. A minor may, however, be held to contracts which involve necessities, such as food, clothing, shelter or medical aid.

In most states, a minor who signs a contract is held to it upon reaching adult status.

Advice on Contracts

1. Never sign a contract with blank spaces.
2. Never sign a contract to get rid of an irritating salesperson.
3. Never sign a contract without getting a copy.
4. Never sign a contract unless all promises are included in writing and the total amount of money to be paid by you is clearly stated.

5. Do not sign a contract unless you read and understand everything. If necessary, take it to a lawyer or consumer help office and have it explained.
6. Know your rights and responsibilities.

Torts

A tort is a wrongful act or failure to act that results in an injury or loss. The remedy for torts is through the civil justice system.

The principle at work goes back to the idea of reasonable rights and behavior. Everyone has rights. These rights include protection against loss or injury as a result of carelessness or malicious (intentionally harmful) acts by others. When a loss or injury is suffered as a result of unreasonable conduct, a tort action under civil law may be filed. The action asks the court to award a judgment of damages to be paid by the party committing the tort to compensate the injured party for the injury or loss.

Most torts have five common elements:

1. Duty--All persons have a duty not to commit acts that endanger the health or property of others. Drunken drivers should not be driving.
2. Legal rights--For example, all persons have legal rights to assemble and express their opinions. Violent acts that take away these rights are torts.
3. Reasonable foresight--To be considered a tort, an act committing breach of duty or violation of rights must involve a lack of reasonable care or thought. Throwing things might be considered such an act.
4. Injury or loss--There must be an injured party and evidence of damages suffered to have a tort action.
5. Proximate cause--There must be a direct relationship between the act and the damage.

An intentional tort results from an act that was committed knowingly. This type of tort includes situations in which persons are attacked physically or where property is damaged purposely. An unintentional tort results from negligence, a failure to exercise reasonable care that contributes to accidental injury or property damage. Most auto accidents resulting from carelessness are unintentional torts.

Damages awarded to injured parties in tort cases include several categories: 1) specific damages are money damages awarded to repay the actual loss suffered by an injured party, 2) general damages are awards of money to compensate an injured party for loss other than those covered by specific damages, and 3) punitive or exemplary damages which are similar to fines in that they are intended to punish guilty parties by requiring payment.

Torts represent a broad area of civil law. Some of the most typical legal actions involving torts are as follows: personal injury, assault, battery, false imprisonment, property damage or loss, conversion as defined as assuming the rights of ownership over someone else's property without permission, trespass, nuisance as the improper or indecent use of one's own property, injury to reputation, invasion of privacy and negligence.

There is a good possibility that you will be involved in a tort action at some time. The more you understand about the principles behind the law of torts, the better equipped you will be to deal with any problems that may arise and the more likely you will be prepared to take appropriate action to avoid legal problems.

CRIMINAL LAW

Laws in the United States, as well as in most countries, can be categorized as either "civil" or "criminal." Criminal law is that law which, for the purpose of protecting society, declares what conduct is criminal, sets forth the procedures for determining guilt or innocence, and prescribes punishment. All other law is civil in nature, including laws governing probate, small claims, most traffic violations, and lawsuits by one party against another. Listed below are some similarities and differences between civil and criminal cases.

Similarities

1. Civil and criminal laws are designed to shape people's conduct along lines which are beneficial to society.

2. In most civil cases, excluding traffic violations, the defendant is entitled to a trial by jury as is the defendant in all criminal cases.

3. The party initiating the action (the plaintiff) has the burden of proving the allegations in the complaint in both civil and criminal cases.

4. The defendant has the right to cross-examine the plaintiff's witnesses and introduce evidence through his own witnesses in civil, as well as in criminal cases.

Differences

1. In a criminal action, the complaint is brought on the behalf of society; in a civil action, one party sues another.

2. A defendant in a criminal case is entitled to an attorney at public expense if he cannot afford one; not so in a civil case.

3. The burden of proof in a criminal case is higher than a civil case. In other words, it's harder for the plaintiff (State of North Dakota) to win in a criminal case than for Jones (plaintiff) to win in a lawsuit against Smith (defendant).

. The losing party in a civil suit will most often be required to pay money to the prevailing party; the accused criminal who is convicted may be fined and imprisoned.

Key Questions

1. Why should the penalties for losing a civil case differ from those in a criminal case?

2. Should the burden of proof be the same in both criminal and civil cases? Why or why not?

3. Should people cited with traffic offenses have the right to trial by jury? Why or why not?

4. Why is it difficult for minors to get credit?

5. How would you go about purchasing a car? Would it make any difference if you were buying it from a close friend? Why or why not?

6. What are some things you would consider before entering into a contract?

7. If you were not satisfied with the terms of the contract after you signed it, what recourse(s) would you have?

8. Is any promise a contract?

9. What can you do if someone breaks a contract with you?

10. How would you decide if a tort action should be filed?

11. Why is it to your advantage to know about tort actions?

PROFILE OF THE NORTH DAKOTA JUDICIAL SYSTEM

The original constitution of the State of North Dakota created a judicial system consisting of the supreme court, district courts, county courts, justice of the peace courts, and such municipal courts as provided by the legislature. This judicial structure remained intact until 1959 when the Legislature abolished the justice of the peace courts in the state.

In 1981 the Legislature further altered the structure of the judicial system by enacting legislation which replaced the multi-level county court structure with a uniform system of county courts throughout the state. This new county court structure became effective on January 1, 1983. With this new county court system in place, the judicial system consisted of the supreme court, district courts, county courts, and municipal courts.

The 1987 Legislative Assembly established the North Dakota Court of Appeals, effective July 1, 1987. This appellate court was established to assist the North Dakota Supreme Court in meeting its increasing workload.

All judges in North Dakota are elected in nonpartisan elections. Justices of the supreme court are elected for ten-year terms, district court judges for six-year terms, and all others for a term of four years. A vacancy on the supreme court or district court may be filled by either a special election called by the governor or by having the governor appoint one from a list provided by the judicial nominating committee. In either case the person filling the vacancy serves only until the next general election. The person then elected serves out the remainder of the unexpired term.

Vacancies in the county and municipal courts are filled through a similar process which involves government leaders at the level for which the court has jurisdiction.

All judges are subject to removal, censure, suspension, retirement or other disciplinary action for misconduct by the supreme court upon recommendation of the Judicial Qualifications Commission. Other methods can be established by the legislature. (See Section 12 of Article IV, North Dakota Constitution.)

THE SUPREME COURT

The North Dakota Supreme Court is the highest court for the state of North Dakota. It is the "court of last resort" in North Dakota for all disputes or legal controversies concerning state law under the North Dakota State Constitution. It is located in the judicial wing on the second floor of the state capitol.

The supreme court has two primary functions. First, it reviews decisions of the lower courts, and sometimes decides whether or not a law is constitutional. This part of the supreme court's job usually comes about because one of the parties involved in an action in a lower court was not satisfied with the decision of that court. That process is called an appeal, but the court may also take a case under consideration if it feels that the case is critical to the state. The court is then said to have taken "original" jurisdiction.

The second function is to provide administrative leadership for the rest of the state's legal system. The supreme court has authority over all judges of every nonfederal court in the state and all officers and lawyers of those courts. The supreme court provides rules of procedure; it assigns judges to temporary duty in any of the other courts; it may transfer cases from one judge to another; and it may set the time and place for holding court sessions.

The North Dakota Supreme Court has five justices. Each justice is elected for a ten-year term. The terms of the justices are staggered so that usually only one judgeship is scheduled for election every two years. Each justice must be a licensed attorney and a citizen of the United States and resident of North Dakota. One member of the supreme court is selected as chief justice by the justices of the supreme court and the district court judges. The chief justice's term is for five years or until the justice's elected term expires. The chief justice's duties include presiding over supreme court conferences, representing the judiciary at official state functions, and serving as the administrative head of the judicial system.

While the supreme court is the final authority in the administration of the judicial system, there is much work to be done. In order to get the job done, the supreme court relies on both paid employees and numerous advisory committees which utilize volunteers who are knowledgeable in the law and government. Since the supreme court must take responsibility for the end result, these committees have been established as advisory committees. Each of the committees deals with a specific problem area. Examples of this type of committee are: the judicial planning committee, the joint procedure committee, the attorney standards committee, and the judiciary standards committee.

There are also several boards which help to make our judicial system run more smoothly. Examples of these are: the disciplinary board which handles complaints of unethical conduct by attorneys, the judicial conduct commission which handles complaints against judges, and the state bar board which examines those attorneys who wish to practice law in the state of North Dakota.

NORTH DAKOTA COURT OF APPEALS

The 1987 Legislature established the North Dakota Court of Appeals, effective July 1, 1987. The Court of Appeals is available to assist the Supreme Court on a yearly basis if the Chief Justice certifies to the Governor that the Supreme Court has disposed of 250 cases in a twelve-month period preceding September 1 of any year.

Each panel of the Court of Appeals consists of three judges who may be active or retired district court judges, retired justices of the supreme court or lawyers. Sessions of the court may be held in Bismarck or at other cities in the State as prescribed by order of the supreme court.

Cases assigned to the Court of Appeals may include family law cases, misdemeanor convictions, appeals from administrative agencies, small claims court or municipal court, appeals of juvenile court cases, original jurisdiction proceedings and appeals from summary judgments. All proceedings before the Court of Appeals are governed by the North Dakota Rules of Appellate Procedure.

DISTRICT COURTS

The next level of the courts below the supreme court is the district court. In 1979, the supreme court divided the state into seven judicial districts, with a district court in each. The legislature determines the numb [illegible] of district judges. Currently there are twenty-seven district court judges.

The district courts have general and original jurisdiction. That means that they have the ability to handle any case which arises under North Dakota statutes. All criminal felony cases are tried in district court, as are all civil cases involving more than $10,000. The responsibility for civil cases involving smaller amounts and misdemeanor criminal cases is shared with the county courts. The district court has original jurisdiction over the juvenile courts. Since there are more counties than there are district court judges, some judges must travel from county to county within their judicial districts to hear cases.

All district court judges are required by the state constitution to be licensed North Dakota attorneys and citizens of the United States and residents of North Dakota.

Juvenile Court. In 1911, the juvenile court law created a separate method of dealing with children w[illegible] came to the attention of the courts. Instead of a for[illegible] system designed to punish those coming before the court, the juvenile court was designed to be an informal process where the child in question was to be rehabilitated using methods more in line with those of traditional family type discipline.

The juvenile court is a part of the district court, with most of the work being done by a support staff of people specially trained to deal with young people.

During the 1960s, the juvenile court system changed in order to guarantee juveniles the same constitutional protections which would be available to an adult facing criminal charges. Those rights include such things as the right to have an attorney, the right to confront and cross examine, the privilege against self-incrimination (you don't have to testify against yourself), and other procedural rights relating to defendants in a court of law.

The juvenile court has jurisdiction over any child under the age of 18. There are some exceptions to that jurisdiction. Most of the exceptions are in the area [illegible] noncriminal traffic offenses. The juvenile court als[illegible] shares concurrent jurisdiction with the county court in proceedings involving the treatment or commitment of mentally ill or drug abusing juveniles.

There are three general categories which include most of the children who come to the juvenile court's attention. The first is the criminally delinquent child. A criminally delinquent child is a person under the age of 18 who has violated criminal laws that pertain to all individuals. The second category contains those children who have been accused of being "unruly." An unruly child is a juvenile who breaks the laws of society which apply only to children. Examples of that type of law are those which require children to go to school, mind the reasonable commands of their parents or those legally responsible for the child, and refrain from running away from home. Finally, the juvenile court is concerned about children who are "deprived." Children are considered to be deprived if they do not receive adequate care from their parents. If children are physically, sexually or emotionally abused, or are abandoned or neglected by their parents or guardians it is up to the juvenile court to try to address these problems in ways most beneficial to the children.

Since the chief goal of juvenile court is to rehabilitate rather than punish, the juvenile court usually tries to provide for treatment in the child's own community, and whenever possible, within the child's own home. In order to do this, the court makes use of several community service organizations.

COUNTY COURTS

The next level of the judicial system is the county court system. The county courts have some overlapping (concurrent) jurisdiction with both the district courts above them and the municipal courts below. For instance, while the district courts are empowered to hear all civil and criminal cases, in actuality, many of the criminal misdemeanor cases and civil cases involving less than $10,000 are handled in county court. Also, preliminary hearings and arraignments for criminal felony cases are heard in county court.

County courts in North Dakota underwent a major transformation in 1983. A new uniform system of county courts took effect on January 1, 1983, and replaced the previous three-tier county court system. The new county courts differ from the old county courts in three major aspects: 1) all county courts are now courts of records; 2) all county judgeships are now full-time positions; and 3) all county judges now must be legally trained. Under the old county court system, most of the county courts were not courts of records and many of the county judgeships were part-time positions staffed by laymen rather than licensed attorneys. As was the case under the old county court system, county courts under the new county court system are still funded by the counties.

County courts act as small claims courts in North Dakota. The jurisdictional limit for a small claims case is $3,000. There is no appeal from the decisions of the county court when it is acting in its capacity as a small claims court. All decisions of the county court's in such instances are final.

Small Claims Court. The purpose of our civil court system is to settle disputes between persons or businesses. Many of these disputes do not involve large sums of money nor do they present difficult legal problems. The Small Claims Court is a "people's court" for settling disagreements of up to $3,000. It is intended to be an inexpensive and informal process where you can present your case without a lawyer and receive a fast and fair hearing. Disputes are decided by the county court judge. No juries are used in Small Claims Court.

The plaintiff, who must be 18 or older, begins the process by obtaining the necessary forms from the county clerk of court. A minimal fee is required for filing each action or lawsuit. The case is heard in the county of the defendant's residence. One cannot bring suit in Small Claims Court against a person or business whose residence is outside North Dakota. Upon filing the claim, the judge will set a date for trial. It is the duty of the plaintiff to send the defendant, by certified restricted mail, a copy of the claim and notice of the trial date. The defendant may assert a counterclaim against the plaintiff which will be decided by the court at the same hearing as that for the plaintiff's claim.

If the defendant fails to appear in court, the plaintiff wins the lawsuit by default. If the plaintiff fails to appear, the court will likely dismiss the action. If both parties appear, they may testify themselves, introduce exhibits, or call additional witnesses to testify on their behalf. The judge, after reviewing the testimony and exhibits, if any, will issue a judgment in favor of one of the parties. If the losing party refuses to pay after judgment is entered, the victorious party may obtain a court order authorizing the sheriff to pick up property belonging to the losing party and sell it to satisfy the judgment. Another method of satisfying the judgment is to get a court order for garnishment of the losing party's wages. However, this action is rarely used.

The decision to proceed in Small Claims Court is irrevocable and the judge's decision is final, it cannot be appealed.

In addition to its trial court duties, county courts also serve as the courts of appeal for appeals from municipal courts. All appeals for municipal courts to county courts are trial *de novo* appeals. In other words, when a municipal court case is appealed to the county, a new trial is held in the county court.

There are twenty-seven county court judges in North Dakota. Fifteen of these judges serve more than one county. The legislation creating the new county court system authorized counties to contract with one another for the services of one or more county judges. This contractual agreement is called a multi-county agreement. The office of county judge is an elected position, filled every four years in a nonpartisan election. In establishing the new county court system, the Legislature vested county judges with the same power and authority as district court judges. Moreover, the rules of practice and procedure governing district court proceedings also apply to county courts.

The 1993 legislature passed a bill to unify the court system. Effective January 2, 1995, county courts will be abolished and a one-level trial court will be administered by the district court.

MUNICIPAL COURTS

The broadest level of the judicial court system in North Dakota is the municipal (city) court. There is no provision for a jury trial at this level of the judicial system; however, a defendant has an automatic right of appeal into the county court if he or she desires a trial by jury. Municipal courts are also not permitted to hear cases involving violations of state laws.

There are approximately 360 incorporated cities in North Dakota. Of the total municipalities, approximately 150 cities have municipal courts. There are approximately 130 judges serving in these 150 municipalities. State law permits an individual to serve more than one city as a municipal judge.

Municipal judges have jurisdiction over all violations of municipal ordinances, except certain violations involving juveniles. Violations of state law are not within the jurisdiction of the municipal courts.

Municipal judges are elected for a term of four years. The judge must be a qualified elector of the city, except in cities with a population below 5,000. In cities with a population of 5,000 or more the municipal judge is required to be a licensed attorney unless an attorney is unavailable or not interested in serving. At present, there are approximately 24 legally-trained and 106 lay municipal judges in the state.

Key Questions

1. Should there be a more formal process to deal with juvenile offenders? Why or why not?
2. If you were a juvenile judge who was involved in a serious child abuse case, would you recommend removal of the child from the home? Why or why not?
3. When would you recommend that a delinquent offender be tried as an adult rather than as a juvenile?
4. What are the advantages of bringing suit in Small Claims Court?
5. What are the disadvantages?
6. What kind of claims do you think are likely to end up in Small Claims Court?
7. What are the two primary functions of the North Dakota Supreme Court?
8. What is the court structure in North Dakota?
9. Why was the North Dakota Court of Appeals established?

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10. What does it mean to have general and original jurisdiction?

11. What court does not allow for a jury trial?

BEST COPY AVAILABLE

RULES OF JUDICIAL CONDUCT

THE JUDGE'S ROLE

What is sometimes referred to as "The Canon of Judicial Ethics" is the "North Dakota Rules of Judicial Conduct." The explanations to the five canons are an attempted condensation of the commentary material written in the . . . Rules. The total content of the Rules can be found in the North Dakota Court Rules published by the West Publishing Company or in the North Dakota Century Code.

1. **A judge shall uphold the integrity and independence of the judiciary.**

   A judge shall participate in establishing, maintaining, enforcing, and observing the Rules of Judicial Conduct to preserve the integrity and independence of the judiciary.

2. **A judge shall avoid impropriety and the appearance of impropriety in all activities.**

   A judge shall act to promote public confidence in the intent of the judiciary. A judge shall not allow personal relationships to influence the judge's conduct or judgment.

3. **A judge shall perform the duties of the judicial office impartially and diligently.**

   A judge has adjudicative responsibilities that include; being unfearful and unpartisan in making decisions, maintaining order and decorum in all proceedings, being patient and courteous to all parties in a case and being impartial by allowing all legally interested persons in a case to be heard.

   A judge has administrative responsibilities that include maintaining the professional competence of the staff and court officials. A judge shall also initiate appropriate disciplinary measures against another judge or lawyer who is engaged in unprofessional conduct.

   Judges shall also disqualify themselves in cases when the judges' impartiality might reasonably be questioned.

4. **A judge shall also conduct the judge's extra-judicial activities as to minimize the risk of conflict with judicial obligations.**

   A judge may engage in outside activities, if in doing so the judge retains the capacity to decide impartially on any issue that may come before the judge.

5. **A judge or judicial candidate shall refrain from inappropriate political activity.**

   All judges and candidates shall not act as a leader or hold an office in a political organization or be a delegate to a political convention; publicly endorse or publicly oppose another candidate for public office; make speeches on behalf of a political organization; seek or accept an endorsement or letter of support from a political party; solicit funds for, pay an assessment to or make a contribution to a political organization or candidate; or purchase tickets for and attend political gatherings.

THE ROLE OF AN ATTORNEY

Chances are that sooner or later you will need legal help or advice. Our laws are written to protect everyones' rights. This means our legal system is complex. There are many thousands of federal laws, state laws, city ordinances plus court decisions and interpretations. When you engage the services of an attorney (or lawyer), you can expect able assistance from a trained professional who knows the laws and the court system.

Your attorney can safeguard your legal rights and fulfill your legal obligations by preparing documents and agreements such as contracts and wills, negotiating out-of-court settlements and representing you in court.

When should you seek assistance from an attorney?

Early consultation with your attorney may be able to save you time, money and trouble. The earlier you get advice, the less time is generally needed to complete the case. Information and evidence are more readily available when prompt action is taken. Many legal matters have a "Statute of Limitations" . . . you lose your right to act after a certain time.

Some legal problems can be prevented entirely by seeking advice from your attorney in such instances as signing important papers. By taking your attorney's advice, many complications can be avoided.

An attorney should be considered if you:

-- Have just been arrested. It's your right to have a lawyer, even if you can't pay.
-- Are suing or being sued
-- Are involved in buying or selling real estate
-- Have severe money problems
-- Are entering into a major contract or business agreement
-- Have personal affairs that have a legal aspect, e.g., divorce, adoption
-- Are drawing up a will and estate plan

How can you help your attorney?

To best help you protect your rights and meet your obligations, your attorney needs your cooperation. You should:

-- Provide all the facts (good and bad). You can be assured that any information you provide is confidential.
-- Follow your attorney's advice
-- Trust your attorney's judgment
-- After you put a matter into an attorney's hands, wait for him or her to contact you unless there's an important development.

What if you can't afford an attorney?

If you have limited funds, discuss fees on your first visit. You may be able to arrange extended payments or be advised of less expensive alternate services. Free or low-cost legal help is available if you are in serious difficulty and have very limited funds. Some services include:

-- Lawyer's referral service--charges a small fee for the first consultation.
-- Legal Aid Society--provides free services for people in need.
-- Public Defenders--appointed by the court in criminal cases if the defendant cannot afford to pay.

The North Dakota State Bar Board is charged with the responsibility of examining applicants for admission to the Bar of North Dakota annually.

Nationally, about 65 percent of the attorneys (or lawyers) work for law firms or are in private practice. Around 15 percent are government lawyers. Another 15 percent work for various corporations, unions, or trade associations. A small number of attorneys work for public interest or legal aid organizations. An even smaller number are law professors, judges or elected officials.

Contrary to popular belief, most attorneys rarely go to court. The practice of law usually involves giving advice, drafting legal opinions, negotiating settlements or otherwise providing out-of-court legal assistance.

Within the system of courts, attorneys are officers of the courts in which they practice. They have the power of advocacy. That is, they advocate, or represent, the interests and positions of the parties for whom they work. Some attorneys function as prosecutors, representing the interests of the people. Others specialize in defense of accused criminals. In civil cases, attorneys are advocates for their clients, seeking to help them recover from damages suffered or to defend clients against claims of others.

Of course, there are limits to the services an attorney can provide. If your problem is one that requires a business or economic decision, a good business person may be a better advisor. For many other problems a teacher, doctor, or friend may be a better source of advice.

RIGHT TO COUNSEL

The Sixth Amendment of the United States Constitution provides that every criminal defendant shall be entitled to be represented by counsel. Originally, this right involved only representation at trial, not at earlier proceedings.

The court later held that the due process of law required the presence of counsel at every critical stage of the criminal process and that representation at trial by an attorney who had no time to prepare the case was a violation of the Constitution.

Since 1932 the United States Supreme Court has expanded this right of representation to include that every person charged with a felony (generally described as a crime for which the defendant may be imprisoned for more than one year) was entitled to, as a matter of constitutional right, an appointed counsel if the defendant could not afford one. This right was later extended to any person charged with a crime for which he or she could be sentenced to prison.

Although the court mandated appointment of counsel, it did not decree a method by which this representation should occur. Therefore, states have established different procedures to effectuate this obligation. For instance, some states have established "public defenders" who are paid by the government, others appoint local attorneys on a case by case basis. North Dakota has an Indigent Defense Council comprised of court appointed attorneys who are paid by the government to represent indigent criminal offenders.

Key Questions

1. How would you select an attorney?
2. What would you do if you were not satisfied with your attorney?
3. What are some situations that you may find yourself in the next five years that would lead you to seek an attorney's advice?
4. How would you decide when you need the services of an attorney?

JUVENILE VS. ADULT STATUS

(IMPLICATIONS)

Juvenile Delinquent

"An infant who has violated criminal laws or participated in disobedient or immoral behavior, and requires treatment, rehabilitation, or supervision."

A classification of "delinquent" was created to bring children who had committed crimes before a separate juvenile court system. Minors may be judged delinquent for several kinds of acts; possession of alcoholic beverages, possession or sale of narcotics; possession of weapons, assault and battery. Ordinarily, a minor is considered a delinquent upon the violation of state, local or Federal criminal statutes.

The United States Supreme Court has ruled that delinquents charged with criminal offenses are entitled to constitutional guarantees against double jeopardy and conviction requires proof of guilt beyond a reasonable doubt. However, juveniles are not entitled to a trial by jury or to the right of bail.

Minors who commit illegal noncriminal acts are labeled status offenders and are subject to "status offense proceedings." These proceedings do not allow for a court-appointed attorney and the standards for placing minors under the supervision of the court is considerably less stringent than the standard of proof beyond a reasonable doubt in delinquency proceedings.

Adult Status

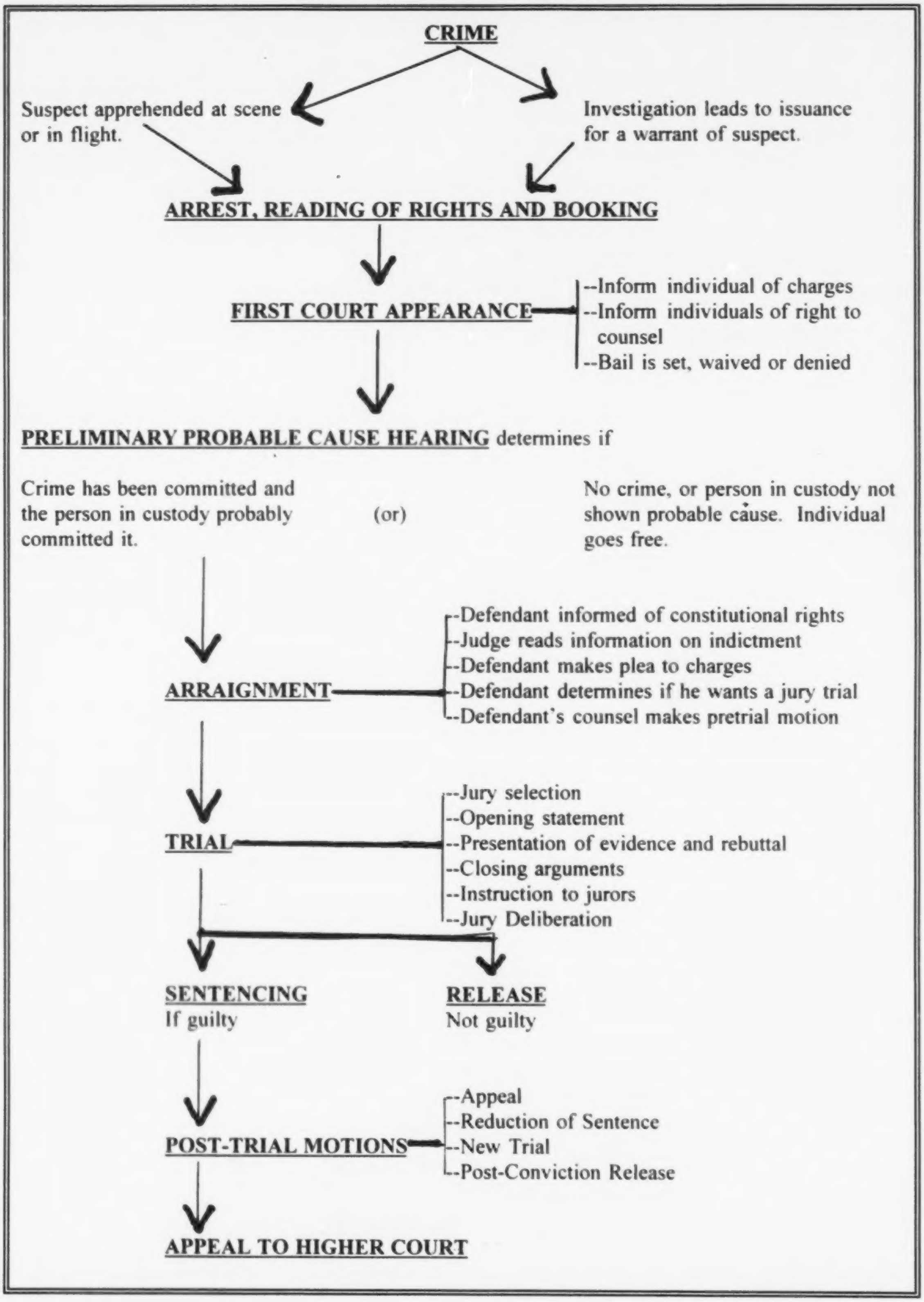
Juvenile Court proceedings are distinct from the criminal law system applied to adults, except in certain jurisdictions where a child may be treated as an adult and brought to the criminal court if he/she is above a certain age (14 in North Dakota) and is guilty of a heinous crime such as RAPE, MURDER, or a similarly serious felony. In such cases, juvenile rights are waived.

DIFFERENT WORLDS

Juveniles and adults who are involved in a criminal case are handled differently.

In the adult system	**In the juvenile system**
A person can be legally arrested if he or she is suspected of committing a crime.	A juvenile can be legally detained if he or she is suspected of committing a crime or a delinquent act.
The state files formal criminal charges in the form of an indictment or information.	The state files a petition with the juvenile court.
A person may be released on bail or his or her own recognizance or may be held in jail until trial.	A juvenile may be released into the custody of his or her parents; may be held in custody until an official hearing (time limit set by statute); or may be placed on probation without an official hearing.
Decisions are made by judges and/or juries.	Decisions are made by hearing officers, commissioners or juvenile judges.
A trial determines whether or not an accused person is, beyond reasonable doubt, guilty of a specific crime.	An adjudicatory hearing determines the truth or falsity of the petition beyond a reasonable doubt. A dispositional hearing determines if the juvenile is in need of state supervision or care.
A convicted person may be placed on probation, fined, and/or sentenced to a specified length of confinement in a jail or prison.	Juveniles judged in need of care are made wards of the court. They may be placed on probation, removed from their family and placed in a group or individual foster home, fined and/or committed to an unspecified length of confinement in a reform school, state institution or camp.
Proceedings and records are public.	Proceedings and records are kept private.

CRIMINAL COURT PROCESS


CRIME
Suspect apprehended at scene or in flight.
Investigation leads to issuance for a warrant of suspect.
ARREST, READING OF RIGHTS AND BOOKING
FIRST COURT APPEARANCE
--Inform individual of charges
--Inform individuals of right to counsel
--Bail is set, waived or denied
PRELIMINARY PROBABLE CAUSE HEARING determines if
Crime has been committed and the person in custody probably committed it.
(or)
No crime, or person in custody not shown probable cause. Individual goes free.
ARRAIGNMENT
--Defendant informed of constitutional rights
--Judge reads information on indictment
--Defendant makes plea to charges
--Defendant determines if he wants a jury trial
--Defendant's counsel makes pretrial motion
TRIAL
--Jury selection
--Opening statement
--Presentation of evidence and rebuttal
--Closing arguments
--Instruction to jurors
--Jury Deliberation
SENTENCING
If guilty
RELEASE
Not guilty
POST-TRIAL MOTIONS
--Appeal
--Reduction of Sentence
--New Trial
--Post-Conviction Release
APPEAL TO HIGHER COURT

SEARCH AND SEIZURE

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

PURPOSE:

To reduce police incentive for unlawful searches and seizures and to preserve the integrity of the courts.

To protect a citizen's right to privacy and his/her reasonable expectations of privacy.

The Fourth Amendment covers the spectrum from routine traffic stops to murder scene investigations. But it only protects against search and seizure by "agents of the government" "in this country."

The Exclusionary Rule further defines the perimeters of the Fourth Amendment with its purpose being to deter overzealous law enforcement by not allowing unlawfully seized evidence at trial and to preserve the integrity of the courts.

The following Exclusions to the Fourth Amendment are broadly stated and are not intended to be all inclusive. Many factors determine their application.

I. OPEN FIELDS: The Amendment is limited to persons, houses, papers, and effects "and does not extend to open fields," defined as anything outside the home or "curtilage." (Curtilage - zone of habitation, any fenced-in area near or adjacent to a dwelling.)

II. ABANDONED PROPERTY: If the property or place is abandoned, the property can be searched and seized even though the property or place was previously protected.

III. FOREIGN COUNTRIES: Applies only to federal or state government and not to foreign countries or their law enforcement agencies.

IV. PRIVATE PARTY SEARCHES: Applies only to governmental action; a private citizen, not actin[illegible] as an agent of the government, may search or seize evidence and turn it over to the government without violating the Fourth Amendment regardless of the unlawful manner in which the search was conducted.

V. CONSENT SEARCH: Voluntary consent is dependent upon the "totality of circumstances," and must be freely and voluntarily given with the burden of proof resting on the state. The Fourth Amendment may be waived by voluntary consent of either the party who is aggrieved by the search or an appropriate third party who has enough of an interest in the place searched or property seized to waive his/her own Fourth Amendment protection. The scope of consent may be limited and may also be withdrawn.

VI. MISCELLANEOUS EXCLUSIONS: The following are a few examples among a growing number of cases that find the Fourth Amendment inapplicable on the basis of "No Expectation of Privacy:" third party bugging; grand jury subpoena for handwriting and voice samples; bank records; dog sniffs of luggage; inventory search of possessions upon incarceration; searches of prisoners' cells.

VII. PLAIN VIEW DOCTRINE: Items in plain view of the law enforcement officer inside of a constitutionally protected area may be seized if they are evidence of a crime.

VIII. CENTRALITY OF SEARCH WARRANT REQUIREMENT/OVERVIEW OF EXCEPTION: As a general rule, all warrantless searches and seizures are considered unreasonable per se and, therefore, unconstitutional. However, there are exceptions and the burden of proof is on the state to show that an exception exists. Exceptions and rationale for the exceptions follow:

1. Search Incident to Arrest (protection of the officer).

2. Stop and Frisk (An officer may frisk when there is "articuable" suspicion that crime

has, is, or is about to occur and that suspect is armed).

3. Carroll Doctrine--Auto Exception (when probable crime exists that a moving vehicle contains evidence of a crime).

4. Emergency Searches--Hot Pursuit and Exigent Circumstances: Law enforcement agents are permitted to make warrantless entries, perhaps even without probable cause, if an emergency exists that justifies the officer's failure to get a warning. (No time to obtain a warrant--delay would endanger life or property; or, imminent destruction of evidence.)

5. Miscellaneous Exceptions, Special Search Situation: Airport; Border; Public Health: Parolee, Probationers and Prisoners; Entry Inspection Searches (rock concert, courthouse, wildlife sanctuaries); Catch-all Reasonableness (weigh individual's privacy and security interests against society's interests and need for evidence).

Student Rights

Students in American public schools do have rights, although limited by the nature of their relationship with the school. Students' rights must be balanced against the schools' purpose in conducting the educational process and providing a safe environment for all students. The following is a "Bill of Rights for Students." Not all of the rights noted are constitutional rights, some have their origin in statutes or common law. The list was devised to be a summary of students' rights.

We, the students of the American public schools, hold the following rights to be self evident.

1. The right to freedom of expression. However, our expression cannot present a material and substantial disruption to the educational process.

2. The right to free exercise of religion. However, our exercise of religion during school time cannot become an establishment of religion.

3. The right to be free from establishment of religion.

4. The right to be free from unreasonable searches.

5. The right to be free from unreasonable rules. However, we are obligated to abide by all reasonable rules set by the school.

6. The right to procedural due process.

7. The statutory right to confidentiality of records.

8. The state right to an education. However, some of this can be taken away from us as punishment for not following reasonable school rules.

9. The common law right to a safe environment. However, we have the responsibility to act reasonably to insure others' and our own safety.

10. The common law right to be free from unreasonable corporal punishment.

Searches in Schools

Can school officials search a student or a student's possessions?

Under certain circumstances. The Fourth Amendment prohibits unreasonable searches and seizures by protecting people's reasonable expectations of privacy. Students have varying degrees of expectation of privacy in their possessions and persons even when they are in school. Although this expectation should be respected, sometimes the needs of the school outweigh the student's right to privacy. When the needs of the school win out in this balancing, it becomes reasonable for the school to search the student.

Can't school officials search a student's locker anytime since it is really school property?

Not necessarily. The protections of the Fourth Amendment do not rely on property rights. Instead, they were intended to protect a person's reasonable expectations of privacy. If school authorities make clear to all students that lockers are the joint property of the student and the school, and if school authorities do not permit locks to be put on lockers which cannot be opened by the administration (by a pass key or through knowledge of the combination), then students may not have a reasonable expectation of privacy in a locker. Even when school authorities have not made it clear to students that access to lockers can be had by school authorities at any time, they may search for drugs, weapons, stolen items, or other contraband when they have a reasonable suspicion that the same will be found within the locker.

When can school officials search a student's body?

A search of a student's body, a strip search, is usually only considered reasonable when those conducting it have probable cause to believe that the object sought can be found in/or on the student's body.

What about emergencies?

The required levels of certainty for infringing on a student's privacy decline as the necessity for the search increases due to emergencies. For example, if there were a bomb threat called into your building, a search could be made wherever that bomb could possibly be secreted without any individualized suspicion that the bomb was located in a certain place.

When can the police search?

Police must strictly adhere to the requirements of the Fourth Amendment. Thus, they usually must have a warrant before conducting a search. If a warrant cannot be obtained because of the urgency of the situation, they may search without a warrant providing they have probable cause to believe that the object sought can be found where they are searching. School officials can be held to this same standard if the primary purpose of the search is to further a police investigation.

Can evidence found during a search be used against a student?

If the search is reasonable, any evidence found can be used against a student in a disciplinary proceeding or a court proceeding even if it was not what was expected to be found when the search was undertaken.

What happens if a search is found to be unreasonable?

If the search was unreasonable, any evidence found during or because of the search is inadmissible in court and probably inadmissible in a disciplinary proceeding as well. In addition, if the school officials knew or should have known that the search was unreasonable, the student can sue them for monetary damages.

New Search Rules For Schools

Can a vice principal conduct a search of a student's purse without a warrant? Does the Fourth Amendment's requirement of "probable cause" apply to searches of students by public school officials or just to police officers? Should school officials have broader search powers than other government officers? Does a high school student have a reasonable expectation of privacy in regard to her purse?

These were some of the issues that arose in the case of New Jersey v. T.L.O., 102 S. Ct. 733, decided on January 5, 1985. A New Jersey high school observed T.L.O., a fourteen-year-old freshman, and another student smoking cigarettes in the restroom. The two young women were taken to see the vice principal, Theodore Choplick.

During the questioning, T.L.O. denied that she had been smoking. Choplick demanded to see her purse. Inside he found a pack of cigarettes, and a package of cigarette rolling papers. Continuing on, he found some marijuana, a pipe, plastic bags, an index card reading "people who owe me money" followed by a list of names and two letters that implicated her in marijuana dealing. He called in her mother and the police.

The state brought charges against T.L.O. T.L.O.'s attorneys presented a motion to suppress the evidence taken from her purse claiming that the seizure was unconstitutional. The motion was denied, and the juvenile court found her to be delinquent. The Appellate Division affirmed the constitutionality of the purse search, but sent it back to the lower courts on other grounds. The New Jersey Supreme Court held that the search violated the Fourth Amendment. New Jersey appealed the decision to the United States Supreme Court.

Justice White wrote the majority opinion in which he stated that a vice principal cannot escape the Bill of Rights because of his/her authority over school children. The Court also recognized that students have legitimate expectations of privacy. Nonetheless, the Court reasoned that there must be a balance between a student's legitimate expectation of privacy and the schools' equally legitimate need to maintain an environment in which learning can take place. To do so Justice White wrote, "requires some easing of the restrictions which searches by public authorities are ordinarily subject. The warrant requirement, in particular, is unsuited to the school environment . . . ." 105 S. Ct. 743.

Justice White's opinion reduced the level of suspicion necessary to justify a search. The Fourth Amendment dictates that, in general, "probable cause" must exist prior to a search. "Probable cause" means that a set of facts leading up to the search make it more probable than not that the person searched or arrested has committed the crime. A majority of Justices decided that the probable cause standard was not necessary in the school environment and that, when a search is conducted by a public school official, all that is needed is "reasonable cause." The "reasonable cause" standard is much more flexible than the "probable cause" standard and a search can be legally conducted if school officials have knowledge based on articulated facts which cause them to suspect that evidence of illegal activity will be found in the area searched.

Justice White applied the "reasonable cause" standard to the case and concluded that Choplick's search of T.L.O.'s purse was reasonable. The report to the vice principal that T.L.O. had been seen smoking provided a reasonable suspicion that she had cigarettes in her purse, justifying the initial search. Once Choplick was inside the purse, he discovered rolling papers which justified his further exploration of the purse.

Two Justices wrote separate concurring opinions supporting the majority decision. Both Justices Powell and Blackmun wanted to clarify some of the legal analysis and emphasize the special characteristics of school settings and teacher-student relationships which "make it unnecessary to afford students the same constitutional protections granted adults and juveniles in a nonschool setting."

Justice Brennan speaking for the dissenting minority on the court, agreed that the Fourth Amendment applied to the conduct of teachers and school administrators but he disagreed that the "reasonableness" standard was an appropriate one. He criticized it as being too vague and ill-defined and argued that a search can only be reasonable on a showing of "probable cause" believing there has been a crime and that a search of a particular location will actually turn up evidence. He argued that once Choplick found the pack of cigarettes his search for evidence of breaking the smoking rule was complete and that he should have looked no further.

The effects of the decision are yet to be determined. Many questions remain about other search and seizure issues. Answers await future Supreme Court decisions.

PLEA BARGAINING

Plea bargaining is an often controversial facet of pre-trial criminal procedure. Most criminal cases do not result in trials, but rather, are settled in the pre-trial stage by some form of plea bargain.

Plea bargaining involves a process of negotiation between the prosecutor and accused (through the attorney) to arrive at the best agreement possible as to the number or type of charges and type or length of sentence.

One argument advanced in favor of plea bargaining is that it eliminates to some extent, the risk inherent in any trial. That is to say, the prosecutor generally runs the risk that the accused may be convicted of a lesser charge than the one in the complaint or information, or not convicted at all. The defense risk is that the accused will be convicted of all of several charges pending. Consequently, the prosecutor may be motivated to drop one or several charges in exchange for a plea, to reduce one or several charges to a lesser charge, or to make sentencing concessions. The accused may be similarly motivated to lessen the sentence and eliminate some of the charges.

Other arguments advanced in favor of plea bargaining are that the process reduces criminal case backlogs, and increases flexibility within the system.

As indicated, plea bargaining is not without its critics. Some would argue that eliminating plea bargaining would also eliminate a frequent practice of prosecutors in which they intentionally overcharge cases with plea bargaining in mind. Some would also argue that plea bargaining results in sentences which are too lenient thereby serving to encourage criminal conduct.

The judge is not involved in plea negotiations until presented in court. Some states, such as North Dakota, have rules regarding written plea agreements. Under North Dakota's Rules of Criminal Procedure, the parties may enter into a written agreement. The court need not, however, accept the agreement. If it is accepted, the sentence must be as agreed or something more favorable to the accused. If the judge rejects the agreement, the accused must be permitted to withdraw the guilty plea since it was premised on the court's acceptance of the agreement.

Other pre-trial activities include discovery which may be used by either party to find out what evidence the other side has and motions for various relief such as suppression of evidence or psychiatric evaluations.

The procedure prior to trial is very similar for federal and state courts.

CRIMINAL TRIAL

GOALS AND ASSUMPTIONS OF A CRIMINAL TRIAL

The role of the judiciary in the criminal justice system is to determine whether a particular accused person is guilty of a particular crime. The way the judiciary makes the decision is a trial. In the trial, however, the judiciary must ensure that the constitutional rights of the accused are protected.

A trial is a formal, public effort to determine whether the government is justified in punishing someone accused of breaking the law. The trial is designed to give the government a fair chance to prove that the person accused of a crime is really guilty, and to protect the person until guilt is proven. The result of a trial is a decision, or verdict as it is called, as to whether the person is in fact guilty and whether he or she should be punished.

The most important goal of a trial is to discover the truth. The object of the trial is to decide exactly what the facts of a situation were--whether a crime occurred, and, if so, whether the person accused committed that crime. The trial is a search for justice: if guilty, a fair punishment will be set; if innocent, the individual will be protected in his or her right to remain free.

FROM ARREST TO TRIAL

The first contact an accused has with the criminal justice system is usually an arrest by a police officer. Within a short time after the arrest, the accused must have an initial hearing before the judge. The purpose of the hearing is to a) inform the accused of the charges against him or her, b) inform him or her of their rights, such as the right to have an attorney, c) appoint a lawyer if the accused can't afford one, and d) set bail, a sum of money the court will keep if a person fails to show up for their next court appearance. At this hearing, the accused is given the opportunity to challenge whether or not there is a sufficient reason to arrest and to charge the person with a crime. In this way, the judge can protect an individual if it appears that no probable cause to arrest the person exists, and the person's freedom is being taken needlessly, and unfairly, and then dismiss the case.

If probable cause exists, the accused is then formally charged in a document known as an information or complaint filed by the prosecuting attorney in the court where the trial will be held. In some jurisdictions, an indictment of an accused is rendered by a Grand Jury, which examines evidence to establish probable cause. Next, the accused is asked to enter a plea in the court where the trial will be held at an arraignment. A plea is how the person responds to the charge--either guilty or not guilty. If the person pleads guilty at arraignment, the judge will make sure the person understands the charges, and that there is some good, factual reason behind pleading guilty. If the person pleads not guilty, a trial will be set for a later date.

Miranda Rights

Before a statement by a defendant in police custody can be admitted into evidence, that defendant must be made aware of certain rights. If this procedure is not followed, any and all evidence obtained from the defendant's statements are inadmissible in a court of law. These rights were affirmed from the 1966 Unite[illegible] States Supreme Court Case Miranda vs. Arizona.

Ernest Miranda was arrested and charged with kidnapping and rape. After he was identified by the complaining witness he was taken into the interrogation room for questioning. Miranda was not advised of his right to an attorney and, through the interrogation by the officers in charge, he confessed to the crimes. Miranda was convicted by a trial court and that decision was upheld by the Arizona Supreme Court. The United States Supreme Court overturned the decision by a vote of five to four.

The rights of the defendant in police custody as established by this Supreme Court decision are as follows:

1. The defendant must have been warned at the beginning of the interrogation of the right to counsel.
2. If indigent, the defendant must be assured that the public will provide counsel.
3. The defendant must be apprised of the right to remain silent and if indicated in any manner at any time prior to or during questioning, that the defendant wishes to remain silent, the interrogation must cease.
4. If the defendant does make a statement, he/she must be warned that anything he/she says can and will be used against him/her.
5. Before a waiver of a defendant's rights will he held valid on an interrogation conducted in the absence of an attorney, a heavy burden rests on the government to demonstrate that the defendant did knowingly and intelligently waive the privilege against self-incrimination and the right to retain or appoint counsel.

These rights only apply after an arrest is made. They do not apply to general questions asked by an officer prior to arrest.

Statement of Rights

Before we ask you any questions, you must understand your rights.

You have the right to remain silent.

Anything you say can and will be used against you in court.

You have the right to talk to a lawyer for advice before we ask you any questions and to have the lawyer with you during questioning.

If you cannot afford a lawyer and want one, a lawyer will be provided for you before any questioning.

If you decide to answer questions now without a lawyer present, you will still have the right to stop answering at any time.

I have read this statement of my rights and I understand what my rights are.

OR

Waiver of Rights

I am willing to make a statement and answer questions. I do not want a lawyer at this time. I understand and know what I am doing. No promises or threats have been made to me, and no mental or physical force of any kind has been used against me.

Signature Time Date

THE ADVERSARY MODEL

The first assumption is that the truth will be best exposed if the two sides to the story are told by different "teams," each striving their best to "win" the trial by proving that the facts are as they claim exist. This is referred to as the **Adversary Model,** so-called because each side represents a position adverse, or opposite, to the other.

The person accused of a crime is called the **Defendant.** The defense attorney, the defendant's lawyer, represents one side of the battle. On the other side is the government. The government is represented by its lawyer, the **Prosecutor,** or prosecuting attorney. These are the adversaries.

PROSECUTING AND DEFENDING LAWYERS

Under court procedures, both sides of a dispute must be equally represented. The representatives should have roughly equal training in the law. This usually means that both sides are represented by lawyers. If a person is accused of a crime and cannot afford a lawyer, the state will provide one to maintain the equality of representation.

The concept of a fair and just legal system depends on these opposing lawyers being equally matched. The defense lawyer must adequately defend the rights of the accused. If the defense lawyer is careless or incompetent in representing the accused, the accused may be eligible for a new trial. Along these same lines, if the rights of the accused are significantly violated during the trial, this also may make the accused eligible for a new trial.

As part of the law-enforcement function, the prosecutor has the power to decide which cases to prosecute. The prosecutor also has the power to decide what specific crime an accused person should be charged with.

State's Attorney (Prosecutor)

Each of North Dakota's fifty-three counties elects a state's attorney who serves a four-year term. The state's attorney is the chief law enforcement officer of the county. Major duties of the state's attorney include prosecuting public offenses occurring in the county; investigating deaths by unlawful means; advising county commissioners, township officers and school boards; and initiating proceedings for the commitment of persons suffering from mental illness, drug dependency or alcoholism. A state's attorney must be a law school graduate and certified to practice law in North Dakota. Salaries of state's attorneys range from $19,000 to $46,000 per year.

Criminal Defense Attorney

It is the duty of criminal defense attorneys to defend the accused, the unpopular and the downtrodden as well as the rich and the powerful when they are charged with crimes, to see to it that these people get a fair trial, and that they are represented and that the state proves its case as it must beyond a reasonable doubt and to a moral certainty. It is their duty as well to see to it that the evidence that is collected by the state and used at the trial is only evidence that prope can be admitted during the course of the trial and that evidence that is tainted or illegally obtained does not get used against the defendant. A criminal defense attorney, like a state's attorney, must be a law school graduate and licensed to practice law in the State of North Dakota. Salaries for criminal defense attorneys begin at $24,000 to $25,000 and have no maximum upward range.

CONSTRUCTING A CASE

As we have seen, it is the prosecutor's task to convince the jury that the defendant committed the crime, while it is the defense attorney's job to raise a doubt in the jury's mind. They do this by building a case. Before the trial begins, each of the attorneys must go about the task of constructing a case.

A. Elements of a Crime

First, the two lawyers will examine the law itself, breaking the law down into elements, or requirements. Assume, for instance, Minnesota law defines jaywalking as "a pedestrian crossing paved street or road at a point other than a corner or readily marked crosswalk" and attaches a fine of $50 for violating the law. A person is charged with jaywalking. The elements of the jaywalking offense are that 1) a pedestrian, 2) crosses a paved street or road, 3) at a point other than a corner or readily marked crosswalk.

Each of these elements must be proved by the prosecutor at trial. If one of the elements is missing, the prosecutor's case is incomplete, and will fail in court. If, for example, a bicyclist crossed a paved street between the corners, one element of the crime of jaywalking is missing, since the accused was a bicyclist instead of a pedestrian. The accused may have in fact used poor judgment as a bicyclist, but he or she is no jaywalker, according to the statute, and is then not guilty of jaywalking. The prosecutor must prove each and every element of the crime in order for a person to be found guilty. The defense attorney, on the other hand, need only show that one element is missing in order to wi the case.

B. Evidence

Next, the lawyers seek out evidence to support each element or to show that an element is missing. This evidence, or the proof of facts, may come in the form of: 1) eyewitnesses (e.g., a shopper who, through a store window, saw the pedestrian cross in the middle of the street), 2) physical evidence (e.g., photographs of the crosswalk markings on the corner showing the proper crosswalk); 3) circumstantial evidence, or evidence which proves other facts which support an element of the crime (e.g., testimony that the bus was loaded and ready to pull away from the curb when the accused jaywalker was across the street, but the accused jaywalker indeed caught the bus a moment later); 4) documents or other papers or tests; or 5) expert testimony by a doctor or psychologist, etc.

C. Discovery

The process of gathering facts to be used in court is called discovery. The Federal Rules of Criminal Procedure and State Rules of Criminal Procedure are the rules which govern what processes are allowed in discovering evidence.

The most important aspect of the criminal discovery process is that the defendant and defense lawyer are entitled to know what evidence the prosecutor will bring forward at trial. The Rules of Criminal Procedure allow the defendant and his defense attorney to find out before the trial what evidence the prosecutor has uncovered--what witnesses the prosecutor will bring forward and what they have said in prior statements, the results of any tests, and so on. This right of the defense is an attempt to keep the adversaries on equal footing. The prosecutor's office, usually a large office with a number of lawyers working in it, financed by the government and backed up by crime labs, etc., has far greater resources than does the defense. The defendant usually has to pay his or her own lawyers, and usually has to pay for any tests, investigation, and other discovery. By allowing the defense to have access to the state's evidence before trial, the Rules of Criminal Procedures help ensure that both sides have an even chance to prove their case.

D. Beyond a Reasonable Doubt Standard

The prosecutor must develop a strong case, for the prosecutor must prove to the jury that the defendant is guilty "beyond a reasonable doubt." That means that the jury must be entirely convinced that the defendant is guilty; if there remains any element the jury is not convinced on, the prosecutor has not proved the case. This requirement represents the prosecutor's burden of proof, or the standard the prosecutor must meet to win the case.

It is a fundamental concept of American criminal law that **one is innocent until proven guilty.** The beyond a reasonable doubt standard is a difficult one to meet to prove guilt. Since our society highly values the right to liberty, the courts must protect the individual, to ensure that a person's freedom is not wrongfully taken away. It has been said that it is better that ten guilty people go free than that one innocent person be jailed. Thus, in deference to this prized value of freedom, our system presumes that everyone is innocent and requires the government to prove guilt beyond a reasonable doubt.

Excerpt from the Phi Alpha Delta Public Service Center Drug Alcohol Education Program, 7315 Wisconsin Avenue, Suite 325E, Bethesda, Maryland 20184.

Key Questions

1. How is plea bargaining used in the criminal procedure? What are some arguments in favor of plea bargaining? Discuss arguments against.

2. What is the most important goal of a trial?

3. Why is the trial process based upon an adversary model?

4. What are the four major tasks an attorney must perform to construct a case?

5. Once arrested, a defendant has certain rights. What are they?

TRIAL PROCEDURES

(SIMULATION OF A CRIMINAL COURT)

Bailiff:	OPENS THE COURT--Announces the judges arrival
Judge:	Swears in the jury and asks the prosecutor for an opening statement.
Prosecuting Attorney:	Reads the indictment, gives an opening statement to summarize the evidence to prove the case for the plaintiff (State).
Judge:	Asks the defense for an opening statement.
Defense Attorney:	Gives an opening statement and summarizes the evidence to rebut the case
Judge:	Calls the first witness for the prosecution
Clerk:	Swears in the witness
Prosecuting Attorney:	Conducts direct questioning of the witness
Judge:	Asks the defense attorney if the witness is to be cross-examined.
Defense Attorney:	Cross-examines the witness.
	NOTE: After each of the witnesses for the prosecution has been questioned by the prosecuting attorney, the attorney for the defense may cross-examine the witness. Each witness is sworn in by the Clerk. After the judge has called each witness for the prosecution, the defense attorney repeats the process and questions each of the defense witnesses (direct examination), followed by cross-examination of the plaintiff's attorney.
Judge:	Calls the first witness for the defense as they are called to the witness stand
Clerk:	Swears in each witness for the defense
Defense Attorney:	Questions the defense witness
Prosecuting Attorney:	Cross-examines witnesses for the defense
Judge:	Asks the prosecuting attorney for a closing statement
Prosecuting Attorney:	Reviews the evidence presented and describes how the evidence satisfies the indictment, points out the applicable laws relative to the case, and asks the jury to rule in favor of the plaintiff.
Judge:	Asks the defense attorney for a closing statement.
Defense Attorney:	Reviews the evidence presented, discredits the testimony and evidence presented by the plaintiff, stresses the facts favorable to the defendant, and asks the jury to rule in favor of the defendant.
Judge:	Charges the jury with determining the facts and rendering a judgment based on the evidence presented.
Bailiff:	Escorts the jury and sees that their deliberations are uninterrupted.
Jury:	Deliberates and returns with the verdict.
Judge:	Asks the jury if they have reached a verdict.
Jury foreman:	Reads the decision of the jury.
Judge:	If the defendant is found guilty, the judge may set a later date for sentencing. If the defendant is found innocent, the defendant is set free.

JURY DUTY AND SELECTION

Our modern jury system is descended from one adopted in England more than three hundred years ago. In those days, neighbors of the accused were called upon to decide cases because they were familiar with the accused and perhaps had personal knowledge of the incident. Today, jurors are chosen randomly from a list of county residents aged eighteen or older. If a prospective juror has personal knowledge of the case or is a relative or friend of any of the parties in the case, he or she will be excused by the judge "for cause." Other prospective jurors may be excused "for cause" if they cannot read and write, have a physical disability such as deafness, or have a strong opinion about the outcome of the case before any evidence is presented.

Both the plaintiff's attorney and the defendant's attorney may excuse prospective jurors by exercising a peremptory challenge. Each attorney may excuse ten persons in a felony case, six in a misdemeanor case, and six in any noncriminal lawsuit. It is not necessary for the attorney to give a reason for exercising a peremptory challenge. For the most part, attorneys decide which prospective jurors to challenge on the basis of their answers to certain questions asked by the attorney. This selection process is often called "voir dire" which means "to speak the truth." The attorneys try their best to weed out persons who are prejudiced against their clients. If neither side challenges a prospective juror, that person becomes a member of the jury panel that ultimately decides the case. During voir dire, attorneys often ask questions intended to persuade the panel rather than to gain information. The lawyer, through jury selection, hopes to have a jury panel that is sympathetic to his/her cause, or, at the least, to have a jury that is not hostile to it.

Duties of Jurors

Jurors in North Dakota are required:

1. To appear in court when summoned by the clerk of court unless excused by the judge;
2. To take an oath if selected to sit on the jury panel;
3. To avoid communication with any of the parties or attorneys during the trial;
4. To refrain from discussing the case with anyone until jury deliberations begin;
5. To listen to and follow the instructions given by the judge;
6. To freely express opinions during deliberation; and
7. To arrive at a unanimous verdict if possible.

It is important that you be fair and attentive throughout the trial. Do not discuss this case among yourselves or with anyone else. Do not permit anyone to discuss it with you or in your presence. Do not form or express any opinion on the case until it is finally submitted to you.

Most difficult to understand is that you may not discuss this case among yourselves until it is finally submitted to you. You will receive the opening statements, the evidence, the arguments, and the law--in that order. It would be unfair to discuss the case among yourselves before you receive everything necessary for your decision.

You must explain this rule to your family and friends. When the trial is over and your jury duty completed, you are released from this instruction. At that time you may, but you are not required to, discuss the case and your experiences as a juror. Until that moment, control your natural desire to discuss the case, both here and at home.

The Court instructs you not to converse with the attorneys, parties, witnesses, or spectators during the trial. Likewise, the participants in the trial must not converse with you. If anyone should attempt to discuss the case with you, or if any attorney, party, witness or spectator should attempt to converse with you, report the incident to the Court, or to the bailiff, immediately.

Juror's Oaths

Juror to Answer Questions (This is used when picking a jury panel.)

"You do solemnly swear that you will true answers make to all questions as shall be put to you touching your qualifications as a juror in the case now called for trial. So help you God."

Oath to Jury--Criminal Case

"You and each of you do solemnly swear that you will well and truly try, and a true deliverance make, and a true verdict give according to the evidence. So help you God."

Oath to Jury--Civil Action

"You, and each of you, do solemnly swear, that you will well and truly try the matters in issue between ________________________________, the Plaintiff, and ____________________________, the Defendant, and a true verdict render according to the evidence. So help you God."

OPENING JURY INSTRUCTIONS

(Provided by the trial judge)

Statements of Counsel

An attorney is an officer of the Court. It is an attorney's duty to present evidence on behalf of the client, to make such objections as are deemed proper, and to argue fully the client's case. However, the arguments or other remarks of an attorney, except admissions and stipulations noted in the course of the trial, are not to be considered as evidence in this case.

If either attorney makes any comments or statements concerning the evidence which you find are not warranted by the evidence, you should wholly disregard them and rely upon your own recollection or observation.

If any attorney makes any statements as to the law which are not warranted by these and later instructions, you should wholly disregard such statements.

Statements or Actions of Judge

It is very important that you understand that although I am neutral in this case it is my duty to make certain rulings and to conduct the trial. In making these rulings and in conducting the trial, I do not intend to suggest to you how you should decide any questions of fact in this case. If anything I say or do appears to you to intimate how you should decide, please be assured it was unintentional and you should disregard it and form your own opinion. If I should make any comment concerning the evidence which you find is not warranted by the evidence, you should wholly disregard my comment and rely upon your own recollection or observation.

Objections and Motions

At times during the trial, objections may be made to evidence, or motions concerning applicable law may be made. Arguments in connection with such objections or motions are sometimes made out of the presence of the jury. Any ruling upon such motions or objections is based solely on the law and is the responsibility of the judge, not the jury. You must not make inference from my ruling.

At times during the trial, I shall sustain objections to questions asked without permitting the witness to answer, or where an answer has been made, shall instruct that it be stricken from the record and that you disregard it and dismiss it from your minds. You may not draw any inference from an unanswered question, nor may you consider testimony which has been stricken in reaching your decision. The law requires that your decision be made solely upon the competent evidence before you. Such items as I exclude from your consideration will be excluded because they are not legally admissible as evidence in this case. You can be assured that all evidence which is offered and legally admissible will be presented to you.

Weight and Believability of the Evidence

You have heard the opening statements as presented by the attorneys for the various parties. Opening statements are not evidence. These statements are only an explanation of what is expected to be proved so that you can better understand the case. It is up to you to determine if they prove what they said they will prove. This you can only decide after hearing all of the evidence.

You will now hear your first witness as the evidence in the case comes in before you. I want to now explain to you the rules on the weight and believability of the evidence which will assist you in evaluating the testimony of all of the witnesses.

You are the judges of all questions of fact in this case. You alone will weigh the evidence, under these and later instructions, and determine the believability of those who will testify. As to these matters, the Court expresses no opinion.

In determining the believability of a witness, you may consider those facts and circumstances in the case which tend to strengthen, weaken, or contradict a witness's testimony. You may consider the age, intelligence, and experience of the witness, the strength or weakness of the witness's recollection, how the witness came to know the facts to which testimony is given, any possible interest in the outcome of the trial, any bias or prejudice the witness may have, the manner and appearance of the witness, whether the witness is frank or evasive while testifying, and whether the testimony is reasonable or unreasonable.

If you find a conflict in the evidence, you should reconcile it, if you can. If you cannot do so, you have the right to determine whom of the witnesses you will believe, in whole or in part.

You must give to all believable testimony its just and fair weight. You must consider the evidence in this case in the light of your common sense and your ordinary experience and observation of human affairs.

Note-taking

(This is up to the individual judge)

The bailiff has passed out note pads for your use. You are allowed to take notes during the trial if you feel it necessary. I neither encourage or discourage the taking of notes. Some jurors are better able to follow a case by taking notes and others do better just by listening. However, if you do take notes, do not let note-taking distract you so that you do not hear and evaluate all of the evidence. Any notes taken should be kept in confidence between yourself and your fellow jurors. After the trial is over, you must give your notes to the bailiffs who will destroy them.

Admonition

I want to explain to you the rules governing the conduct of a juror.

1. You may not discuss this case with each other or any other person. You may not form or express any opinion on the case until the trial is finished and you are in the jury room and have had the opportunity to discuss the case with all of your fellow jurors.

2. Do not allow any person to discuss the case with you or in your presence, and if anyone attempts to do so, report that fact to this Court immediately.

3. Though it is a normal human tendency to converse with people with whom one is thrown into contact, please do not, during the time you serve on this jury, converse, whether in or out of the courtroom, with any of the parties, or their attorneys or any witness. By this I mean not only do not converse about the case, but do not converse at all, even to pass the time of day. In no other way can all parties be assured of the absolute impartiality they are entitled to expect from you as jurors.

You, as jurors, and myself as judge, must do everything possible to furnish the State of North Dakota and Defendant a fair trial.

SENTENCING

In North Dakota, if a Defendant is found guilty, the sentencing is up to the judge. Sometimes, the sentencing will be conducted immediately upon return of the verdict but, more often, the sentencing will be deferred to a later date. In the interim period, the judge will frequently order a presentence investigation report. These reports are prepared by parole/probation agents who obtain such information as the defendant's family history, health, habits, work history and prior criminal record, if any. The information contained in a presentence investigation is designed to provide the judge with sufficient information to make an informed decision as to an appropriate sentence.

Specific dispositions available to the court include: fines, probation, suspended sentences, incarceration or a combination thereof. If the defense believes the sentence was unjust, an appeal may be filed.

Many factors go into sentencing and in North Dakota they are set forth by statute as follows:

1. The defendant's criminal conduct neither caused nor threatened serious harm to another person or property;
2. The defendant did not plan to expect that the criminal conduct would cause or threaten serious harm to another person or their property;
3. The defendant acted under strong provocation;
4. There were substantial grounds which, though insufficient to establish a legal defense, tend to excuse or justify the defendant's conduct;
5. The victim of the defendant's conduct induced or facilitated its commission;
6. The defendant has made or will make restitution or reparation to the victim for the damage or injury which was sustained;
7. The defendant has no history of prior delinquency or criminal activity, or has lead a law-abiding life for a substantial period of time before the commission of the present offense;
8. The defendant's conduct was the result of circumstances unlikely to recur;
9. The character, history, and attitudes of the defendant indicate an unlikeliness to commit another crime;
10. The defendant is particularly likely to respond affirmatively to probationary treatment;
11. The imprisonment of the defendant would entail undue hardship to the defendant or the defendant's dependents;
12. The defendant is elderly or in poor health;
13. The defendant did not abuse a public position of responsibility or trust; and
14. The defendant cooperated with the law enforcement authorities by bringing other offenders to justice, or otherwise cooperated.

PAROLE AND PROBATION

The concept of parole and probation originated years ago. In 1840 Alexander Maconachie, an Australian prison superintendent, introduced the "ticket of leave" program, which was based on modern behavior modification principles. In the United States several developments antedated and contributed to the theoretical foundation of parole. One was the concept of the indentured servant who was bound to a master under strict rules and regulations. Parole's initial use came in 1876 in conjunction with the opening of the New York State Reformatory for juveniles in Elmira. By 1898, half the states had adopted a parole system. The first federal parole law was enacted in 1910. The federal system has been overhauled numerous times with the last action taking place in 1976, which formed the United States Parole Commission.

From a North Dakota perspective, parole originated in 1889 by way of Article Five Section 6 of the State Constitution. This area of responsibility comes under the Executive Branch and is known as the Board of Pardons. This Board is made up of the Governor, Chief Justice, Attorney General and two appointed individuals. This Board from 1889 to 1963 heard all applications for parole. Since 1963, when the Parole Board was created, the Pardon Board meets three times per year (March, August, December) to review applications for pardons, sentence commutation and reprieves.

As indicated above, the Parole Board was created in 1963. The Board is composed of three appointed members and these appointments are made by the Governor for three-year terms. The Parole Board has an attorney, a person from law enforcement, and an educator. They meet at the State Penitentiary six times per year for two-day sessions to review, on an average, 65 applications for parole. The Clerk of the Parole Board/Pardon Board is the Chief Parole Officer, who is charged with preparing full and complete background information on each applicant/inmate.

Probation is usually given in one or two ways. A court can impose a sentence and then suspend execution of that sentence and place the offender on probation for a fixed period of time. If a condition is breached, usually the court can revoke probation and require the violator to serve the original sentence. The second way of probation is for the court to suspend imposition of the sentence. The court postpones giving a sentence and place the offender on probation for a certain period. If the conditions are violated, the court can impose any sentence it could have imposed before placing the offender on probation.

Parole release can occur in two ways. Approximately 70 percent of all parolees are released as the result of a discretionary decision of a parole board. Most of the rest are mandatorily released on parole pursuant to laws which automatically grant parole for the latter part of a sentence.

Both probation and parole have many advantages. Since the offenders serve a suspended sentence in the community, they can retain jobs and preserve family ties. As a result, they remain productive members of society, are spared the stigma, dangers, and corruptive influence of prison life and may be able to profit from treatment resources unavailable in the penitentiary. Because of these advantages, many authorities contend that rehabilitation can be better accomplished in the community at a substantial cost savings compared to imprisonment. The 1986 cost for supervision in North Dakota was $1.45 per day as versus $39 per day to keep an inmate in the penitentiary.

There is the other side of the coin, of course. Probation and parole creates several problems. The possibility of probation and parole may lessen the deterrent effect of criminal sanctions. Probation and parole may also inadequately serve the retributive function of punishment if the public perceives the actual sentences served as inappropriately lenient. This may lead to a loss of confidence in the fairness of th criminal justice system.

It is plain to see that the utilization of probation by the judiciary in the state of North Dakota compliments the overall supervision program. The success rate for probationers is 86 percent, and parolees 69 percent.

Key Questions

1. With the national problem on prison overcrowding and that problem overlapping into North Dakota, is it feasible to cultivate more extensive use of community based correction programs? (i.e., halfway houses, work release, etc.)
2. Is continued prison construction a sound investment for the State of North Dakota?
3. Should there be an additional expansion of adult correctional programs to serve as an alternative to incarceration?
4. How is the search of a student by an administrator similar to and different from: a) a search by the hotel manager of a hotel room you are renting; b) your landlord searching your apartment; c) a police officer searching your home; d) a metal detector search before boarding an airplane?
5. What effects might the T.L.O. decision have on schools and students? Which are positive? Which are negative?
6. Under what circumstances would you rather have your case tried by a jury rather than by a judge sitting without a jury?
7. Should jury duty be mandatory? Why or why not?
8. For what reasons would you, as an attorney, excuse a prospective juror by use of a peremptory challenge?
9. Should jurors be allowed to ask questions of witnesses?

10. May a jury take written notes during the trial?

11. Who prepares a pre-sentence investigation report for the judge to use in determining an appropriate sentence?

12. What are the statutory factors for sentencing in North Dakota?

ELECTRONIC AND PHOTOGRAPHIC COVERAGE OF COURT PROCEEDINGS

Pursuant to hearings held on February 1 and February 14, 1984, the North Dakota Supreme Court hereby amends and repromulgates Administrative Order 1A-1980 as Administrative Rule 21, relating to the electronic and photographic coverage of court proceedings. This rule is adopted under the authority of Article VI, Section 3 of the North Dakota Constitution.

A. The broadcasting, televising and recording, or photographing of certain proceedings before the North Dakota Supreme Court is authorized pursuant to the following:

1. Proceedings to be Covered--The broadcasters and photographers may review the Supreme Court's calendar to determine the proceedings they wish to cover. They must notify the Court at least 48 hours in advance of any coverage planned. The Court reserves the right, as it deems necessary, to determine the coverage of any and all proceedings.

2. Representative--The broadcasters and photographers shall designate a person with whom the Court may consult as a representative of the broadcasters and photographers.

3. Objections--Any objections to coverage in specific cases shall be submitted in writing to the Clerk of the Supreme Court at the time of the filing of the brief. The Court shall notify the representative designated by the broadcasters and photographers of any decision prohibiting coverage at least 24 hours in advance of the planned coverage.

4. Equipment and Personnel--Unless the Court directs otherwise, equipment within the courtroom will be limited to a single television camera operated by one person, and one audio system for radio broadcasts. Only one still photographer will be allowed. Any pooling arrangements necessitated among the media by these limitations on equipment and personnel shall be the sole responsibility of the media and must be arranged prior to coverage without calling upon the Court to mediate any dispute regarding appropriate media personnel or equipment. Every effort must be made for the joint use of broadcasting equipment within the courtroom. Wires, microphones, and similar equipment shall be placed as unobtrusively as possible within the courtroom at least 15 minutes before the proceedings begin and will be secured or taped down when this is appropriate. No artificial lighting or flashbulbs will be permitted. Only equipment that does not produce distracting noises will be allowed within the courtroom. Broadcast and photographic coverage outside the courtroom shall be handled with care and discretion, but need not be pooled or held to the restrictions listed herein.

5. Decorum--The decorum and dignity of the Court, the courtroom, and the proceedings must be maintained at all times. Court customs must be followed. Media personnel will dress appropriately for the proceedings. Movement about the courtroom shall be limited, and efforts shall be made not to leave the courtroom while the proceedings are underway. There must be no loud talking during the proceedings. The changing of tapes, film magazines, and similar actions during the proceedings shall be avoided whenever possible.

6. Standards--The media shall strive to maintain high journalistic standards regarding the fairness, objectivity, and quality of the coverage allowed under these guidelines.

7. Retention of Tapes--The media covering the proceedings shall retain the tapes, film, negatives, or other similar material for a period of at least 30 days from their first public use or transmission by the media unless written permission is obtained from the Court to dispose of them. Consideration shall be given to full and complete coverage of an entire proceeding whenever possible.

8. North Dakota Advisory Commission on Cameras in the Courtroom--The North Dakota Advisory Commission on Cameras in the Courtroom is created. The Commission shall consist of nine members--two representatives of the North Dakota Bar Association selected by the president thereof, two representatives of the North Dakota Judicial Council selected by the chairman thereof, one representative selected by the Manitoba-Dakota Press Photographers Association, two representatives selected by the North Dakota Broadcasters Association, one representative of the North Dakota Trial Lawyers Association selected by the president thereof, and the representative designated in subsection 2 hereof. The expenses of the individual members of the Commission shall be the responsibility of the selecting authority.

   The Commission shall conduct a continuing evaluation of the operation of these rules and shall submit its findings and recommendations to the Court at such intervals as it deems necessary or when requested by the Court. In addition to its evaluation of the operation of these rules, the Commission shall receive and consider complaints from any person concerning the rules directed to it by the Court, and, if the complaint cannot be satisfactorily resolved by the Commission, submit a report thereon to the Court for such action as the Court finds necessary.

B. In the district, county, and municipal courts, a judge shall prohibit broadcasting, televising, recording, or taking photographs in the courtroom and areas immediately adjacent thereto during sessions of court or recesses between sessions, except that a judge may authorize:

   1. The use of electronic or photographic means for the presentation of evidence, for the perpetuation of a record, for other purposes of judicial administration;

   2. The broadcasting, televising, recording, or photographing of investitive or other ceremonial proceedings;

   3. The photographic or electronic recording and reproduction of appropriate court proceedings under the following conditions:

      a. The means of recording will not distract participants or impair the dignity of the proceedings;

      b. The parties have consented, and the consent to being depicted or recorded has been obtained from each witness appearing in the recording and reproduction;

      c. The reproduction will not be exhibited until after the proceeding has been concluded and all direct appeals have been exhausted; and

      d. The reproduction will be exhibited only for instructional purposes in educational institutions.

C. In the district, county, and municipal courts, no camera, sound recorder, or other device, except those operated for official purposes, by or under the direction of the court, shall be used to photograph, record, or broadcast proceedings of the court, nor shall such devices be brought in or allowed to remain in the courtroom while proceedings are in progress. Official purposes may include the use of electronic or photographic means for the presentation of evidence, for the perpetuation of a record, or for other purposes of judicial administration, and the broadcasting, televising, recording or photographing of investitive or other ceremonial proceedings.

D. The effective date of this rule is July 1, 1984.

Dated at Bismarck, North Dakota, this 29th day of March, 1984.

RECOMMENDED GUIDELINES OF THE FAIR TRIAL-FREE PRESS COUNCIL OF NORTH DAKOTA RELATING TO ADULT CRIMINAL PROCEEDINGS

A. The following information generally should be made public at, or immediately following, the time of arrest:

1. The Accused's name, age, residence, employment, marital status and similar background information.
2. The substance or text of the charge, such as is, or would be contained in a complaint, indictment, or information.
3. The identity of the investigating and arresting agency and the length of the investigation.
4. The circumstances immediately surrounding an arrest, including the time and place of arrest, resistance, pursuit, possession and use of weapons, and a description of items seized at the time of arrest.

B. The following information generally should not be made public at, or immediately after, the time of arrest:

1. Statements as to the character or reputation of an accused person.
2. Existence or contents of any confession, admission or statement given by the accused, or his refusal to make a statement.
3. Performance or results of tests, or the refusal of an accused to take such a test.
4. Expected content of testimony, or credibility of prospective witnesses.
5. Possibility of a plea of guilty to the offense charged or to a lesser offense, or other disposition.
6. Other statements relating to the merits, evidence, argument, opinions or theories of the case.

Key Questions

1. Do you agree that the North Dakota Supreme Court should be allowed to reserve the right to determine the appropriateness of new coverage of its proceedings?
2. What is the purpose of the North Dakota Advisory Commission on Cameras in the Courtroom?
3. Should the media be restricted from receiving some information relating to individuals involved in adult criminal proceedings? Why or why not?

THE PENAL SYSTEM

(Administered by the Executive Branch)

The final institution involved is the penal system. The system is composed of local and county jails, the state and federal prisons. Prisons enforce the sentence set by the judiciary by overseeing the incarceration of a convict.

Many reasons have been advanced to justify or explain how societies deal with their criminal offenders. Most observers agree that these reasons include one or more of the following factors:

1. Retribution--punishing for past wrongful acts;
2. Rehabilitation--correcting wrongful conduct and preparing for re-entry into society;
3. Deterrence--imposing preventive and punitive measures to impede future wrongful conduct by this wrongdoer and others;
4. Incapacitation--removal from society to prevent further wrongful conduct;
5. Restitution--requiring the wrongdoer to repay the victim or society in money or services.

THE VICTIM OF CRIME

Ignored in the past, our justice institutions are finally realizing that victims of crime are also due consideration as a part of the justice system. Chairman of the President's Task Force on Victims of Crime, Lois Haight Herrington, stated it this way: "If we take the justice out of the criminal justice system, we leave behind a system that serves only the criminal."

Up until this realization the justice system had lost sight of the victims and their plight and instead focused on its lawyers, judges and defendants. This is changing and discussion of this change may be appropriate as a part of this program.

THE ROLE OF THE ATTORNEY GENERAL

Technically speaking, the Attorney General is part of the executive branch of government, not the judicial branch. However, the Attorney General is the chief legal officer of the State of North Dakota, as well as the state's chief prosecutor and its chief law enforcement officer so you should be familiar with the duties of the office:

1. Represent the state in all cases in which the state is interested as a party;
2. Institute and prosecute all actions and proceedings in favor of the state which may be necessary in the execution of duties of any state officer;
3. Appear and defend all actions and proceedings brought against any state officer in his/her official capacity;
4. Assist in criminal prosecutions when the interests of the state require it;
5. Consult with and advise the Governor and all other state officials and provide written legal opinions on legal or constitutional questions relating to the duties of such officers;
6. Provide written opinions to the Legislative Assembly.
7. Provide written opinions to state's attorneys or the governing body or city attorney of a city.

The office of Attorney General is a "service office" and the objective is the protection of the state's legal interests and the assistance of various state officers and agencies in performing their duties and responsibilities. For more information on constitutional and statutory requirements, refer to the description in the Executive Branch of this guide.

SUMMARY

All of these institutions, along with the individual persons who are a part of them, make up the criminal justice system. Each institution and each person within that institution has a part to play, and each part is unique. In theory, however, each of the institutions is designed to work with each other in an integrated system, so that society will be guided by fair laws each of us is expected to obey, that those who have broken these laws will be discovered and punished and that we may all be able to safely live our lives as free individuals within an ordered society.

Key Questions

1. What are some of the reasons our society uses to justify how we deal with criminal offenders?
2. Do you feel that victims of crime have been left out of the justice system?
3. Who is the chief legal officer of the State?

GLOSSARY OF NORTH DAKOTA LEGAL TERMS

Accessory: a person who helped plan, instigate, advise or assist in the committing of a crime but who was not directly involved in that crime.

Acquit: to find a defendant innocent in a criminal trial.

Adjudicate: to hear and settle a case by judicial procedure.

Adversary System: the system of trial practice in the U.S. and some other countries in which each of the opposing, or adversary, parties has full opportunity to present and establish its opposing contentions before the court.

Allegation: the assertion, declaration or statement of a party to an action made in a pleading, stating what he expects to prove.

Answer: a written statement of the defendant's case, where the plaintiffs allegations are admitted or denied.

Appeal: process by which a case is brought from one court to a higher court for review.

Arraignment: an initial hearing in criminal cases where the defendant is informed of the charges against him, advised of his rights, and allowed to plead. Bail may be set at this hearing.

Brief: a detailed written legal argument of facts, matters and questions which are in controversy in court.

Burden of Proof: obligation of a party to prove facts at issue in the trial of a case. In criminal cases, the state has the burden of proof.

Challenge for Cause: to formally call into question the capability of a member of the entire panel which is drawn for jury duty from which jurors are selected.

Charge: the accusation of an offense or crime filed against the accused.

Circumstantial Evidence: all evidence of indirect nature.

Citation: a court order or summons for a person to appear.

Civil Law: all law that is not criminal law; usually pertains to the settlement of disputes between individuals.

Commit: to lawfully send a person to prison, an asylum, or reformatory.

Common Law: as distinguished from law created by the enactment of legislatures, the common law comprises the body of those principles and rules of action, relating to the government and security of persons and property, which derive their authority solely from usages and customs of immemorial antiquity, or from the judgments and decrees of the court recognizing, affirming, and enforcing such usages and customs; and, in this sense, particularly the ancient unwritten law of England.

Complaint (civil): initial pleading by the plaintiff in a civil case stating the claims against the defendant.

Complaint (criminal): charge that a person has committed an offense.

Contempt: the intentional act of defying the authority and dignity of the court.

Counterclaim: claim presented by a defendant following the claim of the plaintiff.

Cross-Examination: questioning of a witness in a trial by the party opposed to the one who produced the witness.

Custody: detaining a person by lawful process or authority; actual imprisonment.

Damages: compensation recovered in the courts by a person who has suffered loss, detriment, or injury to his/her person, property or rights through the unlawful act or negligence of another.

Defendant: the person against whom a lawsuit is started or a crime charged. The defendant is sometimes called the "respondent".

Direct Examination: the first interrogation of a witness by the party on whose behalf he is called.

Discovery: in a general sense, the ascertainment of that which was previously unknown; the disclosure or coming to light of what was previously hidden; the acquisition of notice or knowledge of given acts or facts; as in regard to the "discovery" of fraud affecting the running of the statute of limitations, or the granting of a new trial for newly "discovered" evidence.

Due Process: constitutional provision which guarantees that rights will not be affected without notice and an opportunity to be heard.

Evidence: testimony that is admitted during a trial to prove or disprove the various matters that are in dispute.

Expert Testimony: opinion evidence of some person who possess special skill or knowledge in some science, profession or business which is not common to the average man and which is possessed by the expert by reason of his or her special study or expertise.

Felony: a serious crime that is often punishable by imprisonment in the State Penitentiary.

Hearsay: evidence based on what the witness has heard someone else say, rather than what he has personally experienced.

Hung Jury: when a jury cannot agree on a verdict.

Inadmissible: that which, under the established rules of evidence, cannot be admitted or received in a judicial action.

Indigent: impoverished; needy; poor; without funds.

Judgment: a final determination by a court of the rights and claims of the parties in an action.

Jurisdiction: the authority or power of a court to hear a particular case or decide a particular issue.

Leading Question: one which instructs a witness how to answer or suggests the answer desired. Prohibited on direct examination.

Liable: when it is determined that the plaintiff in a civil case has proved his claim against the

Miranda Warning: a warning given prior to custody, advising or informing the individual of his or her rights.

Misdemeanor: offense less serious than felonies; generally those punishable by fine or imprisonment for less than one year.

Motion: a formal application to a legal proceeding requesting the court to take certain action.

Negligence: the failure to do something which a reasonable person, guided by ordinary considerations would do; or the doing of something which a reasonable and prudent person would not do.

Objection: the opposition to the introduction of certain evidence during a trial.

Perjury: a deliberate false statement made under oath.

Plaintiff: party in a civil suit who files a complaint seeking legal relief.

Plea Bargaining: the process whereby the accused and the prosecutor in a criminal case work out a mutually satisfactory disposition of the case subject to court approval. It usually involves the defendant's pleading guilty to a lesser offense or to only one or some of the counts of a multi-count indictment in return for a lighter sentence than that possible for the graver charge.

Preponderance of Evidence: greater weight of evidence which is more credible and convincing to the mind.

Probable Cause: reasonable cause; having more evidence for than against; a reasonable belief that a crime has or is being committed is the basis for all lawful searches and arrests.

Reasonable Doubt: an accused person is entitled to acquittal if, in the minds of the jury, his guilt has not been proved beyond a "reasonable doubt;" that state of minds of jurors in which they cannot say they feel an abiding conviction as to the truth of the charge.

Restitution: act of giving the equivalent for any loss, damage or injury.

Search and Seizure, Unreasonable: in general, an examination without authority of law of one's premises or person with a view to discovering contraband or illicit property or some evidence of guilt to be used in prosecuting a crime.

Statute of Limitations: law which specifies the time within which parties must take judicial action to enforce their rights.

Striking a Jury: process of selecting a trial jury where attorneys "strike" or excuse jurors from the trial until only the number needed remains.

Subpoena: a court order directing a person to appear in court as a witness and to give testimony.

Summons: document directing the sheriff or another officer to notify the person named in an action that he is being sued; document ordering a witness or juror to duty.

Tenth Amendment: an amendment to the U.S. Constitution which provides that the powers not delegated to the Federal Government are reserved to the states or to the people.

To[illegible] a civil category that includes cases in which an injury or wrong doing has been committed, eith[illegible] with or without force, to the person or property of another, not including breach of contract.

Venue: specific county, city or geographical area in which a court with jurisdiction may hear a case.

Venue, Change of: removal of a suit started in one county to another for trial, or from one court to another in the same county.

Voir Dire: to speak the truth. The preliminary examination of a witness or juror as to qualifications.

INFLUENCES

ON

GOVERNMENT

THE NEWS MEDIA

The press (media) in America has traditionally been referred to as "The Fourth Estate" in recognition of its important and powerful role in our political system. Since its conception, the American concept of a free press has frequently stirred controversy in our country. The controversy often stems from the question "What is the fundamental function of the press in America?" This is the question which will be discussed in this article.

Many people feel that a free press is essential to our democratic system which depends on an informed, intelligent and interested body of citizens who must make decisions that affect everyone. Some reporters have felt so strongly about the importance of a free press that they have actually gone to jail to protect the confidentiality of their sources and thus the peoples' right to know.

A paramount issue central to the question of a free press is government secrecy. That is, how much should a reporter report and how much does the public have a right to know?

Democracy is based on the principle that citizens have freedom of choice. It can be safely assumed that in order to make rational choices, people must have adequate information on which to base these choices.

The aggressive press in the U.S. provides constant exposure of government activities, thereby helping to make certain that government always operates within the limits of the Constitution.

The press has established itself as a critic of society, not merely for the sake of controversy, but in order that faults and failures be exposed to the public so they might be corrected.

Some critics of the media contend that reporters are snooping into too many governmental corners these days, suggesting that they are undermining people's faith in our institutions, while others maintain that more investigative reporting should be conducted because even with a free press, power misuse in government is still very common. If the press is restricted, the argument goes, it would only foster a system laden with graft and corruption.

Government has always tended to be suspicious of those who question or criticize its policies. Former Vice President Spiro Agnew was constantly at odds with the press, frequently criticizing and questioning their methods and motives.

President John F. Kennedy actually cancelled White House subscriptions to the New York Herald Tribune because he was displeased with the paper's criticisms of his administration's policies.

There is no question that people in positions of power have an interest in protecting themselves and might support restrictions on the media. On the other hand, the people of this country have an interest in full disclosure so they might be aware of exactly what is going on.

Perhaps if citizens, public officials and media people themselves considered that the basic function of the media is to inform rather than convince, and that it is the responsibility of the consumer to gather information from several sources and weigh, check and compare all information, there would be less controversy concerning free press in America. Unfortunately, the fact is that 60 percent of the population uses television as their primary news source. Since television news stories are short and therefore generally lacking in detail, citizens may find themselves less than fully informed on the important issues of the day.

One must also remember that the news is big business; not only is it a public service to report the news, but it can also bring a profit. Additionally, people in the news media are human beings who carry their own biases with them. Although reporters generally seek to put aside personal biases when covering news stories, there are many occasions when this is not completely possible.

The importance of being a careful news consumer cannot be overstressed. You may have heard it said, "If it was in the paper, it must be true." Or perhaps someone has told you, "I never believe anything I read in the paper." Neither of these extreme attitudes exemplifies of a careful news consumer. Instead, if you approach news reporting with an open mind, you are able to see that issues can have more than one side. If you seek as much information from as many sources as possible, you will be utilizing our constitutionally guaranteed free press to its fullest, and you will be well equipped to become the informed participant that our democratic system requires.

Thomas Jefferson must have had strong feelings about the press when he stated, "Were it left for me to decide whether we should have a government without newspapers, or newspapers without a government, I should not hesitate a moment to prefer the latter."

Key Questions

1. Should the press merely report the news or interpret it? Why?

2. Give examples of how the adversary relationship between the government and the press benefits citizens. Give examples of how that relationship harms citizens.

3. Should a reporter be forced by the law to reveal confidential news sources in a criminal trial? Why or why not?

4. How powerful is the news media in this country? Do you feel it is too powerful? Not powerful enough? Give examples to back up your answer.

5. Does the public have an absolute right to know about government activities?

6. How influential are newspaper editorials?

7. Does the news media create news? Explain what makes an event newsworthy?

MEDIA ISSUES

What are some of the key issues confronting the media? Interpretation of the First Amendment is almost always an issue. What are some of the restrictions on reporters' First Amendment freedoms? Do the restrictions affect a reporter's ability to do his or her job? Reporters use many sources (many not mentioned by name) for their stories. Who are these sources? How do different sources--government officials, press conferences, press leaks--affect the story we read or hear?

How is "news" chosen for printing in the newspaper or airing on television or radio? Who decides what is news? Many questions arise when you begin to think about the media. The media play a very important role in the political process since most of our information about politics and issues comes from television, newspapers, magazines, or the radio. Can you think of some questions for the media speaker?

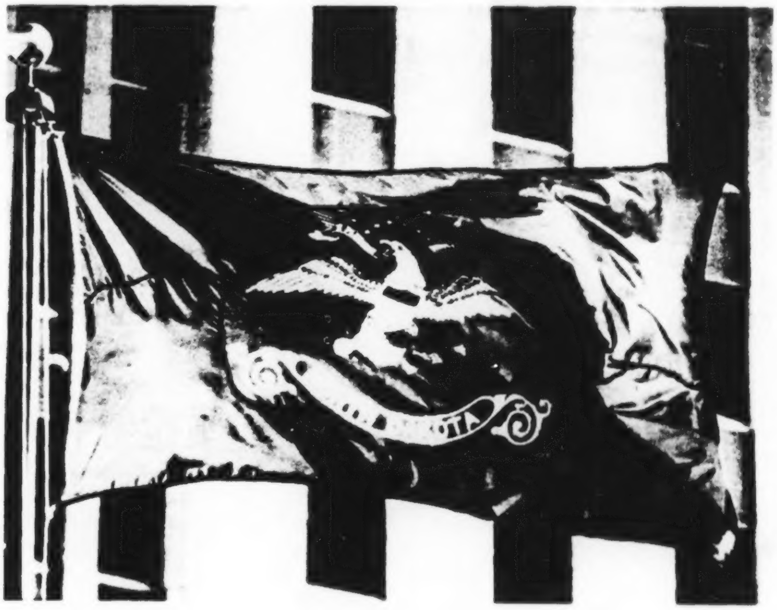
"Congress shall make no law respecting an establishment of religion or prohibiting the exercise thereof; or abridging the freedom of speech, or of the press; or of the right of the people peaceably to assemble, and to petition the government for a redress of grievances."

The First Amendment could not have been clearer in its wording. Our Founding Fathers believed that no nation could be truly free unless its citizens enjoyed access to information and the right to speak out about their government. They also recognized that no democracy could function properly unless its citizens were sufficiently informed to make educated selections at the ballot box.

When the First Amendment was written, "the press" referred to the print media alone. Today, the press includes all forms of media, including television and radio. With the expansion in scope of the media has come a growth in its political role and influence. Today, we are dependent on the media for virtually everything we know about the workings of government and the nature of our political candidates.

Dependent as we are upon information provided by the media, it is critical that journalists adhere to high standards of honesty and objectivity. Of course no one can be completely objective, so it is important to realize the ways in which journalists may be affected by their own biases or the limitations of the information that they have to work with. And it is important to remember that most of our news comes to us through commercial media who entertain as often as they inform.

As you participate in this session, ask yourself why it was that the Founding Fathers were so concerned about freedom of the press and whether there are any circumstances that warrant limiting that freedom. Consider, too, how the insight into the profession of journalism might help you to become a more educated consumer of news.



SPECIAL INTEREST GROUPS

THE INFLUENCE OF SPECIAL INTEREST GROUPS ON THE EXECUTIVE BRANCH

Interest groups play an important role in executive branch activities. Most citizens are aware of the fact that interest groups often lobby the legislators. That is, they contact and interact with legislators in an effort to influence them in their legislative decisions. They work to have legislators propose requested legislation, to amend or redraw legislation to conform to the interest group's interests, or to pass or kill legislation depending on how it affects an interest group's interests.

Less is known about the role that interest groups play in the executive branch and its many agencies. But that role is no less important in terms of the interaction of special constituencies with government decision-makers. The agencies implement the laws and in many cases directly impact the activities of an interest group, particularly if it is a corporate interest (like Basin Electric or Montana-Dakota Utility), or an associational interest (like the North Dakota Bankers Association or the North Dakota Independent Bankers Association). Increased regulation has led to increasing contact of interest groups with executive agencies and their heads. Interest groups provide inputs and data used by the agencies in the formulation of regulations, they appear at hearings the agency must hold to promulgate new regulations, they discuss and negotiate issues of the applicability of regulations to their activities, they often must obtain licenses or permits from the agencies to expand their activities. In some cases they become involved in an adjudication of issues of compliance with state law and regulations. The latter involvement is really the equivalent of a trial to determine whether an interest must comply with state requirements or whether an interest has violated some requirement and must be ordered to comply or be fined or otherwise sanctioned.

The regulatory umbrella, particularly in the health and environment area has broadened and interests have increasingly had to grapple mutually with agencies on a number of increasing technological and economic issues. The greatest involvement has been in terms of the industrial expansion of the energy industry in North Dakota. Basin Electric, for example, has had extensive contacts with the Public Service Commission, the State Water Commission, the Tax Commissioner, Job Service, the Department of Labor, the Economic Development Commission, the Energy Impact Office (extensive involvement), the Attorney General's office, the Industrial Commission, the Health Department, and even the Agriculture Department. For such an interest, contact and interaction at the agency level becomes as important as legislative contact.

Certain interest groups have a regular and continuing pattern of interaction with state agencies. For instance, oil and gas companies and the North Dakota Petroleum Council which is a private association has ongoing contact with the Industrial Commission and its Oil and Gas Division in regard to regulation of the oil industry and development decisions. (Delineation of fields, spacing orders, production quotas, pooling orders, restrictions on flaring of gas, exceptions to drilling rules.) The North Dakota Health Care Association and the North Dakota Hospital Association have many day-to-day issues to discuss in regard to nursing home operations and implementation of Medicare and Medicaid standards. Many of these relationships show that state government has a sensitivity for the special constituencies that operate in the state.

Since the special interests usually come under the regulatory jurisdiction of special boards and commissions (North Dakota has about 100 of them), it becomes important for the special interest to obtain representation on the board itself. In many cases this is mandated by North Dakota State Law. As noted before, there is the example of the State Health Council which includes members who were recommended to the governor for appointment by each of the major organized interests in the health field. This is the pattern for many boards or commissions. In some instances, as in the case of the Dairy Products Promotion Commission, interests group leaders such as the Presidents of the American Dairy Association and the National Dairy Council of North Dakota are made ex officio members of the Board. Even corporate representation is sometimes mandated for board membership. For instance, the State Electrical Board has five members appointed by the governor, one of whom must be a consumer member of an electric co-op and one of whom must be a representative of investor owned electric utilities.

In cases where the laws do not actually specify members of particular associations, the competition between different interest groups to get their members on these boards can be intense. For instance, the governor has only to pick six persons, one from each judicial district to the Game and Fish Advisory Board. The North Dakota Wildlife Federation, the North Dakota Sportsmen, and Ducks Unlimited all present the governor with their slate of eligibles. Similarly the North Dakota Banking Association and the North Dakota Independent Bankers submit their own slate of considerees for the North Dakota Banking Board.

Unorganized interests also are guaranteed representation on some advisory boards. For instance, the Manpower Services Council includes 28 members. Represented are several state agencies that are concerned with employment such as Job Service and Vocational Rehabilitation. Representatives of the Association of Counties and the North Dakota League of Cities are also included. Importantly, the governor is asked to appoint members representing agriculture, labor, business, veterans, older workers, the handicapped, women, Indians, low-income groups, and the general public. The recruitment system for state boards reflects a general public expectation that executive boards and commissions shall operate with input from all constituencies affected by the action of the boards.

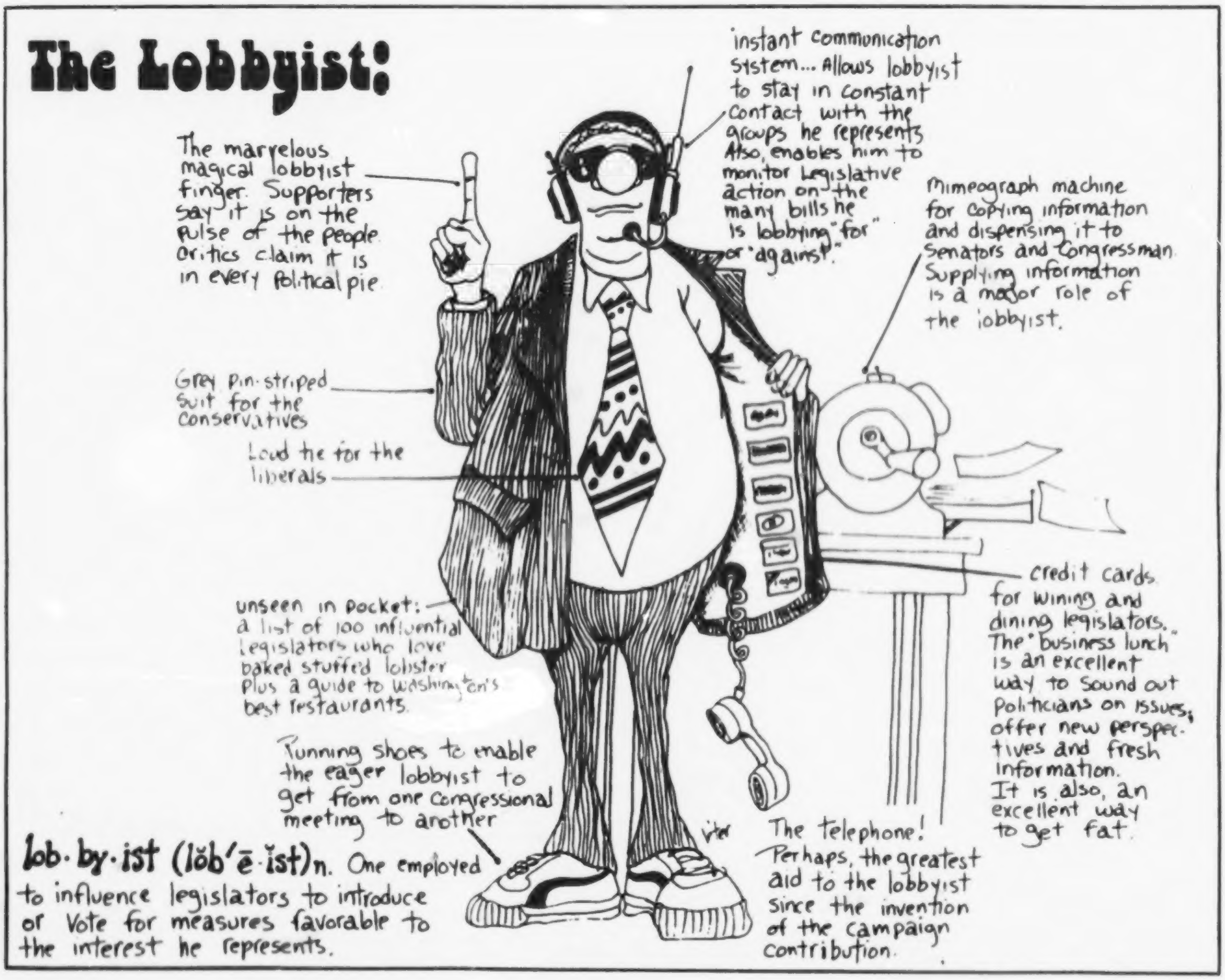
How does this accommodation between agencies and special interests work? Some might feel that these relationships are akin to having the fox guard the henhouse. However, reports are that the relationships are productive and in the public interest. The presence of interest group representatives allows for direct communications on the needs and problems of the regulated interests and also furnishes vital expertise necessary for decision. In areas like the human service advisory boards, the education advisory boards, and the water conservation commission, the citizen members and the interest group representatives have been very professional in their approach and have operated to provide essential expertise, and control conflict to minimal levels within these institutions.

LOBBYING AND INTEREST GROUP

Lobbyists are essential to the American form of government. They supply legislators with a wealth of information that otherwise would not be available. Without this information, the legislators would be dependent upon the executive branch for all (or much of) the information upon which to base decisions which would seriously impair the separation of powers. The term "interest group" refers to a group that attempts to influence the outcome of legislation and/or policy. State law requires lobbyists to register with the Secretary of State. Is your seminar speaker a registered lobbyist? Why or why not?

Although the law requires the registration of those whose principal occupation is affecting legislation, many people who are not registered do lobby, including citizens. Look at the chart below to see how many different types of interest groups are involved in the political process.

Has this been your perception of a lobbyist? What purpose does a lobbyist serve?


The Lobbyist:
The marvelous magical lobbyist finger. Supporters say it is on the pulse of the people. Critics claim it is in every political pie
instant communication system... Allows lobbyist to stay in constant contact with the groups he represents. Also, enables him to monitor Legislative action on the many bills he is lobbying "for" or "against".
Mimeograph machine for copying information and dispensing it to Senators and Congressman. Supplying information is a major role of the lobbyist.
Grey pin-striped suit for the conservatives
Loud tie for the liberals
unseen in pocket: a list of 100 influential legislators who love baked stuffed lobster plus a guide to Washington's best restaurants.
credit cards for wining and dining legislators. The "business lunch" is an excellent way to sound out politicians on issues, offer new perspectives and fresh information. It is also, an excellent way to get fat.
Running shoes to enable the eager lobbyist to get from one Congressional meeting to another
The telephone! Perhaps, the greatest aid to the lobbyist since the invention of the campaign contribution.
lob·by·ist (lŏb'ē·ĭst) n. One employed to influence legislators to introduce or vote for measures favorable to the interest he represents.

BEST COPY AVAILABLE

INTEREST GROUPS--WHOM THEY LOBBY AND HOW

Who Lobbies	Who Is Lobbied	Methods of Lobbying
Individuals Local Officials Other Legislators Citizens	Legislators Representatives Senators Staff Members Committee Members	Personal Contact Meet with government officials or members of their staff to provide them with credible information.
Business/Industry ND Retailers Assoc. ND Beer Wholesalers ND Buildings & Trades	Executive Branch Agencies Economic Development Securities Commission Workmen's Compensation	Grassroots Lobbying Organize and conduct mass mailings and phone-ins.
Labor Unions AFL-CIO United Mine Workers Ironworkers	Departments Health Human Services Public Instruction Highway Motor Vehicle Institutions Tax Labor	Education Campaigns Inform citizens and government officials about an issue.
Health Associations ND Health Care Blue Shield of ND ND Medical Association ND Chiropractic Assoc.		Coalition-building Bring different organizations together to support or oppose one issue or a group of related issues.
Agriculture ND Farmers Union ND Farm Bureau		
Utilities Northern States Power Rural Electric Cooperatives Montana Dakota Utilities		
Transportation Burlington Northern Railroad Company ND Aviation Association ND Motor Carriers		

This is just the beginning. Can you identify additional categories and groups?